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Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

LEONARD R. BENTON,

Petitioner,

v.

STATE OF CONNECTICUT,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

GARY A. MASTRONARDI
Attorney for Petitioner
2112 North Avenue
Bridgeport, Connecticut 06604
(203) 368-0411

QUESTION PRESENTED

Does a warrantless police seizure of a defendant's statements, uttered by that defendant in the privacy and inner sanctum of his own home, constitute an illegal search and seizure under the Fourth Amendment, when the statements seized and subsequently used by police as evidence against the defendant were overheard by an eavesdropping police officer, without the use of an aural enhancement device, through the common wall of a neighbor's adjoining duplex apartment in which that eavesdropping officer was legally stationed, surreptitiously, for the sole and express purpose of conducting an aural and physical surveillance of the defendant's activities within the defendant's home.

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Petitioner Leonard R. Benton respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Connecticut entered in this proceeding on January 26, 1988.

OPINIONS BELOW

The opinion of the Supreme Court of Connecticut, reported at 206 Conn. 90 (1988), is reprinted in Appendix A.[1] The opinion of the Connecticut Appellate Court, entered on February 27, 1987 and reported at 10 Conn. App. 7 (1987), is in Appendix B.

[1] References to Appendix are abbreviated herein as "A. ____".

The bench decision of the Connecticut Superior Court, entered on March 12, 1985, which is presently unreported, is reprinted in Appendix C.

JURISDICTION

The judgment of the Supreme Court of Connecticut, affirming the Superior Court's judgment of conviction and the Appellate Court's decision on appeal, was entered on January 26, 1988. This petition for certiorari is filed within sixty days of the date of the Connecticut Supreme Court's judgment, in compliance with Rule 20.1. This Court's jurisdiction is invoked pursuant to 28 U.S.C. Section 1257(3), petitioner asserting the deprivation of rights secured by the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

United States Constitution, Amendment XIV:

> [N]or shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 54-94a, Connecticut General Statutes, Conditional Nolo Contendere Plea. Appeal of Denial of Motion to Suppress or Dismiss:

> When a defendant, prior to the commencement of trial, enters a plea of nolo contendere conditional on

> the right to take an appeal from the court's denial of the defendant's motion to suppress evidence based on an unreasonable search or seizure or motion to dismiss, the defendant after the imposition of sentence may file an appeal within the time prescribed by law. The issue to be considered in such an appeal shall be limited to whether it was proper for the court to have denied the motion to suppress or the motion to dismiss. A plea of nolo contendere by a defendant under this section shall not constitute a waiver by the defendant of nonjurisdictional defects in the criminal prosecution.

STATEMENT OF THE CASE

Sometime during the last two months of 1983, Connecticut State Police Inspector James Gallick, then actively engaged in a narcotics investigation which targeted, among others, the petitioner, Leonard R. Benton, of 200 Westfield Avenue, Bridgeport, Connecticut, met privately with William Bell, the petitioner's next door neighbor. (A. 70-76). Bell lived in a duplex apartment located at 198 Westfield Avenue in Bridgeport, immediately touching and adjoining the apartment of the petitioner. In fact, the two apartments shared a common wall. (A. 68, 73-76). During the meeting Inspector Gallick learned from Bell that the common wall shared by the duplex apartments was paper thin, and that it was possible to listen through that wall into the petitioner's home and to eavesdrop on the petitioner's private conversations as they occurred. (A. 73-76, 193).

On January 6, 1984, Gallick received informant information that the petitioner might soon engage in an illegal narcotics transaction. On that date, he re-contacted Bell, this time, to secure Bell's permission to use his adjoining apartment later that evening in order to conduct an aural and physical surveillance of the petitioner's activities in and about the petitioner's home. (A. 77-78, 214-215).

That evening, at approximately 6:00 p.m., with Bell's permission, Gallick quietly entered Bell's apartment through a

sliding glass door located in the rear of the apartment. (A. 95-96). While outside the building in the open courtyard of the duplex, Gallick was physically unable to hear voices or noises emanating from inside the petitioner's apartment. (A. 156). However, upon entering Bell's adjoining apartment, and upon stationing himself at various locations along the thin common wall separating the two duplex apartments, standing at a distance of only twelve to eighteen inches from the wall, Gallick, without any warrant authorizing his actions, was able to eavesdrop on the petitioner's conversations as they occurred, word for word, within the petitioner's home. (A. 90). No aural enhancement device was used by Gallick. The eavesdropping was conducted with the naked ear. (A. 5).

On January 23, 1984, the State's Attorney for the Judicial District of Fairfield at Bridgeport, Connecticut applied to Connecticut's three-judge wiretap panel for a wiretap order authorizing state officials to intercept wire communications over the petitioner's home telephones. In support of his wiretap application, the state's attorney submitted the affidavit of State Police Inspector John Solomon, dated January 23, 1984. (A. 214). The affidavit set forth, in detail, the results of Inspector Gallick's January 6, 1984 aural surveillance of the petitioner's conversations overheard as spoken within the petitioner's home. (A. 214-222).

On January 25, 1984, based primarily on Gallick's information related in Solomon's affidavit in support the state's attorney's wiretap application, Connecticut's wiretap panel authorized the wiretapping of the petitioner's telephones. For twelve days thereafter, between January 25 and February 5, 1984, state authorities intercepted, monitored and recorded telephone conversations of the petitioner which the state later contended constituted evidence of narcotics violations. (A. 235-236). On February 5, 1984, using the conversations intercepted during the wiretap of the petitioner's telephones as a basis for probable cause, Inspector Solomon applied for and obtained from the Connecticut Superior Court, a search warrant authorizing the search of the petitioner's home. Thereafter, the warrant was executed

by state officials and the state recovered items which it later contended also constituted evidence of narcotics violations.

Prior to trial, the petitioner moved to suppress both the wiretap evidence and the fruits of the subsequent search of the petitioner's home on several grounds including, *inter alia*, that the state's wiretap application, which was based primarily on information seized by Inspector Gallick on January 6, 1984, without a warrant, while eavesdropping through the common wall of the duplex into the petitioner's home, violated the petitioner's Fourth Amendment rights. (A. 29-44). The motion was subsequently denied by the trial court, (A. 29-44), and thereafter, the petitioner entered conditional pleas of nolo contendere pursuant to Connecticut General Statutes Section 54-94a, findings of guilt were subsequently entered by the court on numerous narcotics violations, and the petitioner's right to appeal the trial court's denial of his motion to suppress was preserved. On April 21, 1985, the petitioner was sentenced to a term of ten years incarceration.

On appeal to the Connecticut Appellate Court, that Court noted initially that "The precise facts of [this] case have not served as the background for a holding in any case, either federal or state, of which this court or the parties are aware." (A. 13-14). Perceiving absolutely no distinction, however, between the factual setting of this case, which involved police intrusion into a person's home, and that of the long line of garden variety eavesdropping cases involving non-electronic eavesdropping by police on defendants from adjoining hotel or motel rooms, and in fact, analogizing this case to the ordinary garden variety eavesdropping case, the appellate court ruled that the petitioner's subjective expectation of privacy in conversations conducted in the confines of his own home was no greater than the privacy expectation enjoyed by a transient guest of a hotel or motel. The appellate court concluded that "statements made in an apartment in a tone of voice audible to persons in adjacent apartments are the *functional equivalent* of statements knowingly exposed to the public." (A. 18). (emphasis added). While the appellate court also expressly acknowledged that its holding in this case constituted an " . . . *extension* of the holdings in other

[Fourth Amendment] cases," (A. 18), (emphasis added), it characterized that extension as only "slight" and therefore tolerable. Accordingly, the appellate court found "no error" in the trial court's denial of the petitioner's suppression motion.

The Connecticut Supreme Court's Decision

On April 9, 1987, the Connecticut Supreme Court granted the petitioner's petition for certification agreeing to review the Connecticut Appellate Court's decision in this case of first impression. The Connecticut Supreme Court framed the limited issue to be reviewed as follows:

> Were the defendant's rights under the fourth amendment to the United States constitution violated by failure to suppress statements overheard, without the use of any aural enhancement device, by a police officer stationed in an apartment adjacent to that of the defendant.

(A. 254-255).

On January 26, 1988, the Connecticut Supreme Court unanimously affirmed the decision of the appellate court. The Court adopted in toto the reasoning of both lower Connecticut courts, ignoring the well-established distinction under Fourth Amendment law, traditionally recognized by federal courts, between the degree of Fourth Amendment protection from police eavesdropping accorded persons in hotel or motel rooms as opposed to that accorded persons in their homes. The Connecticut Supreme Court held that:

> "Persons, such as the defendant, residing in an apartment, or persons staying in a hotel or motel *have the same fourth amendment rights* to protection from unreasonable searches and seizures and the same reasonable expectation of privacy as do the residents of any dwelling."

(A. 6). (emphasis added).

Reasons For Granting The Writ

I.

The Connecticut Supreme Court Has Adopted And Applied An Erroneous Rule Of Fourth Amendment Law Which Cannot Be Reconciled With Decisions Of The Federal Circuits

This case is not only unique on its facts, but also the first of its kind to ever reach this Court which squarely presents an issue of Fourth Amendment law often alluded to by lower courts, but consistently left open and unresolved. Unlike the ordinary garden variety eavesdropping case in which the issue has typically arisen, and which usually involves police eavesdropping in a hotel/motel setting, in this case, the Court is called upon to decide the precise parameters of Fourth Amendment protection afforded a person's private conversations carried on not, as is usually the case, in a person's hotel or motel room, but in the privacy of that person's own home.

This case is particularly well-suited for review by this Court for several reasons. First, as noted by even the Connecticut courts themselves, the case is truly unique on its facts, and their holdings constitute an expressly acknowledged "extension" of the boundaries established in prior Fourth Amendment cases, federal and state, in which the permissible scope of police eavesdropping under the Fourth Amendment has been delineated. (A. 18).

More importantly, however, the case affords this Court the rare opportunity to squarely address and decide, once and for all, the degree of significance to be accorded by courts to the rigid, antiquated notion of "physical trespass" in applying the *Katz* expectation of privacy test[2] to warrantless police eavesdropping occurring in or about a person's home. Since, in this case, in appyling the expectation of privacy test, the Connecticut Supreme Court clearly *de-emphasized* the significance of the

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[2] *Katz v. United States*, 389 U.S. 347 (1967).

"place" where the police intrusion occurred,[3] while placing great weight and emphasis on the absence of physical trespass by police,[4] and since this approach runs contrary to the *Katz* rationale, the Connecticut Supreme Court's decision simply cannot be reconciled with federal decisional law.

Katz v. United States, 389 U.S. 347 (1967) "established the expectation of privacy rationale as the touchstone governing the scope of Fourth Amendment protection. . . Discarding the notion that a physical trespass is essential to any Fourth Amendment violation, the Supreme Court found the intrusion in *Katz* to be unconstitutional. Thus, *Katz* teaches that 'the Fourth Amendment protects people, not places.' " *United States v. Mankani*, 738 F.2d 538, 542 (2d Cir. 1984). (emphasis added).

Since the *Katz* decision, federal courts have had occasion to rule in a legion of eavesdropping cases, and their decisions have provided extensive elucidation on the principle first enunciated in *Katz* that physical trespass is not an essential prerequisite to a Fourth Amendment violation.

In *United States v. Jackson*, 588 F.2d 1046 (5th Cir. 1979), for example, the Fifth Circuit observed that while it is true that "a government agent may legally engage in aural surveillance only when he listens from a place where he has a legal right to be," *Id.* at 1053, it is equally true that, under *Katz*, "there is no requirement that the government [agent] engage in a physical trespass before the individual can invoke Fourth Amendment protection." *Id.* At the heart of this rationale is the fundamental principle that non-trespassory police practices which are not intrusive in one setting may well be intrusive when employed in other settings; particularly when, as in the present

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[3] The Connecticut Supreme Court perceived no distinction between the privacy expectation of a transient guest of a hotel or motel and that of a person in his home. (A. 10).

[4] The Connecticut courts all agreed that, unless Gallick were a "trespasser", his eavesdropping with the naked ear could not, as a matter of law, violate the Fourth Amendment. (A. 5, 7, 17-18, 38-39).

case, the police practice is employed in or about a person's home. *See e.g. United States v. Karo*, 468 U.S. 705, 714 (1984) ("At the risk of belaboring the obvious, private residences are places in which the individual normally expects privacy free of governmental intrusion not authorized by a warrant, and that expectation is plainly one that society is prepared to recognize as justifiable."); *United States v. Mankani*, 738 F.2d, *supra*, at 544 ("hotels, as opposed to residences, are truly transitory places. . . Unlike an apartment. . . hotels and motels are not ordinarily considered places where one lives and keeps personal effects."); *United States v. Agapito*, 620 F.2d 324, 331 (2nd Cir. 1980) ("the reasonable privacy expectations in a hotel room differ from those in a residence . . In view of the transient nature of hotel guests. . . one cannot be sure who his neighbors are in a hotel room. A person in a residence generally knows who his neighbors are. A person in a hotel room therefore takes a greater risk than one in a residence. . . .").

In *Jackson*, the government invited the Fifth Circuit to adopt the same sweeping "physical trespass" rule adopted by the Connecticut Supreme Court in this case. The government's proposed rule in *Jackson*, as here, over-emphasized the importance of the "non-trespassory" actions of its agents, and de-emphasized the crucial role of "place" in the application of the *Katz* expectation of privacy test. The government claimed that if an agent eavesdropped: (a) with the naked ear; and (b) from a place where he was legally entitled to be, and was therefore not a trespasser, that agent's conduct could not, as a matter of law, violate a person's Fourth Amendment privacy interests. In expressly declining to accept the government's invitation to adopt such a sweeping rule, the Fifth Circuit held as follows:

> "We note that under the *Katz* expectations test it would be possible for a police officer, using only his natural senses, to commit an illegal search and seizure without engaging in a physical trespass. . .The Court in *Katz* did not restrict its holding that a nontrespassory surveillance could violate the Fourth Amendment to electronic eavesdropping cases. *We therefore reject*

> *as overly broad the government's proposed rule that any information obtained by an officer using his natural senses from a place where he has a legal right to be is admissible evidence.* Cases may arise in which a police officer, though legally in the place from whence he makes his observations, nevertheless infringes on the privacy upon which an individual justifiably relied."[5]

Id. at 1054, n. 13 (emphasis added). (citations omitted).

The Fifth Circuit's reasoning in *Jackson* is also entirely consistent with holdings of other federal circuits that have ruled in similar cases. *See e.g. United States v. Mankani*, 738 F.2d, *supra*, at 544. (Absence of physical trespass or intrusion not controlling.); *United States v. Agapito*, 620 F.2d, *supra*, at 331 (2d Cir. 1980) (*Katz* outlaws the notion that absence of physical trespass is a controlling factor in determining the applicability of the Fourth Amendment.).

In this case, it is undisputed that Inspector Gallick eavesdropped on the petitioner's in-home conversations with his naked ear from a place where Gallick was legally entitled to be, and therefore, was not a trespasser. Yet, under *Katz*, the inquiry does not end there. Clearly, the petitioner's privacy expectation regarding conversations he carried on while in the inner sanctum of his own home was both reasonable and justified. He did nothing to voluntarily expose his statements to the public. (A. 126-127).[6]

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[5] The petitioner respectfully submits that if the factual setting of the instant case is not precisely the factual setting contemplated by the Fifth Circuit at the time it reached the foregoing conclusion, then the Fifth Circuit's language here is utterly superfluous.

[6] Clearly, inherent in the concept of voluntarily exposing one's statements to the public is the prerequisite that the eavesdropper/listener be positioned in "public space." *United States v. Wilkes*, 451 F.2d 938, 941 n.6 (2d Cir. 1971); *United States v. Case*, 435 F.2d 766, 768 (7th Cir. 1970). Thus, the Connecticut Appellate Court's conclusion that statements uttered by an apartment dweller that are audible to one in a neighboring apartment (i.e. one situated in "non-public space") are the "functional equivalent" of statements exposed to the public is patently illogical. An eavesdropper situated in a neighboring apartment cannot be said to be positioned in "public space." (A. 137-138).

Indeed, the evidence in this case clearly demonstrates that, but for the surreptitious "non-public" nature of the location in which Gallick was situated, the petitioner's statements would have been totally inaudible to the state. *Compare Case*, 435 F.2d, *supra*, at 768 (Agents' conduct in eavesdropping from limited access hallway held illegal because hallway was not a public area), *with United States v. Llanes*, 398 F.2d 880 (2d Cir. 1968) (Agents held to have eavesdropped legally because situated in *public* hallway.).[7]

To summarize, in a case involving a factual background which has never before served as the basis of any decision, in any court, federal or state, the Connecticut Supreme Court, by judicial fiat, has adopted a sweeping rule of Fourth Amendment law which even the Connecticut courts themselves have recognized as an "extension" of rulings in other cases. The decision of the Connecticut Supreme Court simply cannot be reconciled with federal decisional law on the subject. Indeed, the very rule adopted by the Connecticut Supreme Court in this case, and held to be a permissible extension of holdings in prior Fourth Amendment cases, has been expressly rejected in the past by federal courts as "overly broad". Under such circumstances, the necessity for review by this Court is nothing less than compelling.

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[7] Significantly, from his non-public vantage point, Inspector Gallick would have been able to hear, without any warrant authorizing his conduct, not only the conversations described in the state's attorney's wiretap application, but the most private, intimate and privileged activities and conversations of the defendant within his own home, including but not limited to, spousal conversations, marital or conjugal activities, conversations with attorneys or physicians, and other types of private activities and communications entitled to non-intrusion within any expectation of privacy enjoyed by one in his home.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari to review the judgment of the Connecticut Supreme Court should be granted.

Dated: Bridgeport, Connecticut
March 26, 1988

Respectfully Submitted,

Gary A. Mastronardi
2112 North Avenue
Bridgeport, Connecticut 06604
(203) 368-0411

Attorney for Petitioner

APPENDIX

APPENDIX A

STATE OF CONNECTICUT *v.* LEONARD R. BENTON (13159)

PETERS, C. J., HEALEY, SHEA, CALLAHAN and GLASS, Js.

The defendant, on the granting of certification, appealed to this court from the decision of the Appellate Court affirming his conviction of the crimes of violating the state dependency producing drug law and possession of drug paraphernalia in a drug factory situation. He claimed that certain incriminating conversations that took place within his apartment were illegally overheard by a police officer eavesdropping from an adjacent apartment and were thus improperly cited in an affidavit supporting the state's application for a wiretap order. The evidence resulting from the wiretap and from a search of his apartment pursuant to a warrant obtained on the basis of an affidavit containing information gained through the wiretap should, he further claimed, have been suppressed as "fruit of the poisonous tree." *Held* that the defendant's claims were unavailing; what a government agent perceives with his unaided senses, when lawfully present in a place where he has a right to be, is not an illegal search under the fourth amendment.

Argued November 12, 1987—decision released January 26, 1988

Information charging the defendant with four counts of the crime of violation of the state dependency producing drug law and one count of the crime of possession of drug paraphernalia in a drug factory situation, brought to the Superior Court in the judicial district of Fairfield, where the court, *Lavery, J.*, denied the defendant's motions to suppress and dismiss; thereafter, the matter was presented to the court, *Landau, J.*, on pleas of nolo contendere; judgment of guilty, from which the

defendant appealed to the Appellate Court, *Dupont, Borden* and *Spallone, Js.*, which affirmed the trial court's decision, and the defendant, on the granting of certification, appealed to this court. *Affirmed.*

John R. Williams, with whom, on the brief, was *Sue L. Wise*, for the appellant (defendant).

C. Robert Satti, Jr., assistant state's attorney, with whom, on the brief, was *Donald A. Browne*, state's attorney, for the appellee (state).

CALLAHAN, J. The defendant was charged in an information with four counts of violating the state dependency producing drug law[1] and one count of possession

[1] General Statutes (Rev. to 1983) § 21a-277 provides in pertinent part: "(Formerly Sec. 19-480). PENALTY FOR ILLEGAL MANUFACTURE, DISTRIBUTION, SALE, PRESCRIPTION, DISPENSING. (a) Any person who manufactures, distributes, sells, prescribes, dispenses, compounds, transports with the intent to sell or dispense, possesses with the intent to sell or dispense, offers, gives or administers to another person any controlled substance which is a hallucinogenic substance, other than marihuana, or a narcotic substance except as authorized in this chapter, for a first offense, shall be imprisoned not more than fifteen years and may be fined not more than three thousand dollars or be both fined and imprisoned and for each subsequent offense, shall be imprisoned not more than thirty years and may be fined not more than five thousand dollars, or be both fined and imprisoned.

"(b) Any person who manufactures, distributes, sells, prescribes, dispenses, compounds, transports with intent to sell or dispense, possesses with intent to sell or dispense, offers, gives or administers to another person any controlled substance, except a hallucinogenic substance other than marihuana, or a narcotic substance except as authorized in this chapter, may, for the first offense, be fined not more than one thousand dollars or be imprisoned not more than seven years or be both fined and imprisoned; and, for each subsequent offense, may be fined not more than five thousand dollars or be imprisoned not more than fifteen years, or be both fined and imprisoned."

General Statutes § 21a-279 provides in pertinent part: "(Formerly Sec. 19-481). PENALTY FOR ILLEGAL POSSESSION. SUBSTITUTION OF MEDICAL TREATMENT FOR CRIMINAL SANCTIONS. (a) Any person who possesses or has under his control any quantity of any narcotic substance, except as authorized in this chapter, for a first offense, may be imprisoned not more than seven years or be fined not more than fifty thousand dollars, or be

of drug paraphernalia in a drug factory situation.[2] After the trial court denied his supplemental motion to suppress evidence, the defendant entered nolo contendere pleas to all counts of the information under General Statutes § 54-94a.[3] In doing so, he reserved his right to appeal the trial court's denial of his supplemental motion to suppress. The trial court entered findings of guilty on all counts and sentenced the defendant to an effective term of ten years imprisonment.

The defendant appealed to the Appellate Court, claiming that the trial court erred in failing to suppress evidence that had been gathered as a result of a wiretap

both fined and imprisoned; and for a second offense, may be imprisoned not more than fifteen years, or be fined not more than one hundred thousand dollars, or be both fined and imprisoned; and for any subsequent offense, may be imprisoned not more than twenty-five years, or be fined not more than two hundred fifty thousand dollars, or be both fined and imprisoned.

"(b) Any person who possesses or has under his control any quantity of a hallucinogenic substance other than marihuana or four ounces or more of a cannabis-type substance, except as authorized in this chapter, for a first offense, may be imprisoned not more than five years or be fined not more than two thousand dollars or be both fined and imprisoned, and for a subsequent offense may be imprisoned not more than ten years, or be fined not more than five thousand dollars or be both fined and imprisoned."

[2] General Statutes § 21a-277 (c) provides: "No person shall knowingly possess drug paraphernalia in a drug factory situation as defined by [subsection] (20) of section 21a-240 for the unlawful mixing, compounding or otherwise preparing any controlled substance for purposes of violation of this chapter."

[3] "[General Statutes] Sec. 54-94a. CONDITIONAL NOLO CONTENDERE PLEA. APPEAL OF DENIAL OF MOTION TO SUPPRESS OR DISMISS. When a defendant, prior to the commencement of trial, enters a plea of nolo contendere conditional on the right to take an appeal from the court's denial of the defendant's motion to suppress evidence based on an unreasonable search or seizure or motion to dismiss, the defendant after the imposition of sentence may file an appeal within the time prescribed by law. The issue to be considered in such an appeal shall be limited to whether it was proper for the court to have denied the motion to suppress or the motion to dismiss. A plea of nolo contendere by a defendant under this section shall not constitute a waiver by the defendant of nonjurisdictional defects in the criminal prosecution."

on his telephones and a subsequent search of his apartment by the police. The wiretap had been authorized by an order of the wiretap panel. General Statutes § 54-41d. The search had been conducted pursuant to a subsequently issued search warrant. General Statutes § 54-33a.

On his appeal to the Appellate Court, the defendant's principal claim was that the affidavit in support of the state's application to the wiretap panel contained references to conversations that emanated from his apartment in a two family duplex house located at 200 Westfield Avenue in Bridgeport. Those conversations, he argued, were illegally overheard by an eavesdropping police officer in violation of the defendant's rights under the fourth amendment to the United States constitution. He contended, therefore, that they could not be cited in the affidavit and that, without those conversations, there was insufficient probable cause to justify the issuance of the wiretap order. Information gathered as a result of the wiretap was later used as a principal component of probable cause in an affidavit employed to obtain the search warrant for the defendant's apartment. The defendant argued that any evidence that had resulted from the wiretap and the search warrant should have been suppressed as "fruit of the poisonous tree." *Wong Sun* v. *United States*, 371 U.S. 471, 488, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963).

The Appellate Court disagreed with the claim that there had been an illegal search, ruling that the conversations in question had not been overheard in violation of the fourth amendment. *State* v. *Benton*, 10 Conn. App. 7, 12–13, 521 A.2d 204 (1987). It held that the trial court, consequently, did not err when it denied the defendant's supplemental motion to suppress. On petition, we granted certification limited *solely* to the following question: "Were the defendant's rights under the fourth amendment to the United States constitu-

tion violated by [the trial court's] failure to suppress statements overheard without the use of any aural enhancement device, by a police officer stationed in an apartment adjacent to that of the defendant?" We agree with the reasoning and result reached by the Appellate Court and will comment further only briefly.[4]

The conversations in question were overheard by a detective who was assisting in an investigation of the defendant's alleged participation in illegal narcotics activity. On the evening of January 6, 1984, at the time he overheard the conversations, the detective was in the apartment adjacent to that of the defendant for the specific purpose of maintaining a surveillance of the defendant. It is unquestioned that he was there with the express permission of the tenant of that adjacent apartment. While there, intermittently, over a period of some three hours, from a distance not closer than twelve to eighteen inches to the common wall dividing the two apartments,[5] the detective overheard incriminating conversations. It is undisputed that the detective did not employ electronic aids or sensory enhancing devices of any kind and that the conversations were heard with the "naked ear."

The general rule is that what a government agent perceives with his or her unaided senses, when lawfully present in a place where he or she has a right to be, is not an illegal search under the fourth amendment. *United States* v. *Mankani*, 738 F.2d 538, 543 (2d Cir.

[4] The defendant also claimed in the Appellate Court that even if the conversations had not been obtained in violation of the fourth amendment and were properly included in the affidavit to obtain the wiretap order, the wiretap panel still had insufficient reliable information to justify the issuance of its order. The Appellate Court rejected this claim and our grant of certification did not include this issue.

[5] The trial court and the Appellate Court noted the distance as between one and three feet. The state and the defendant, however, appear to agree that the police officer testified that the distance was twelve to eighteen inches.

1984); *United States* v. *Wheeler*, 641 F.2d 1321, 1324 (9th Cir. 1981); *United States* v. *Agapito*, 620 F.2d 324, 330–31 (2d Cir.), cert. denied, 449 U.S. 834, 101 S. Ct. 107, 66 L. Ed. 2d 40 (1980); *United States* v. *Jackson*, 588 F.2d 1046, 1053, reh. denied, 591 F.2d 1343 (5th Cir.), cert. denied, 442 U.S. 941, 99 S. Ct. 2882, 61 L. Ed. 2d 310 (1979); *United States* v. *Ortega*, 471 F.2d 1350, 1361 (2d Cir. 1972), cert. denied, 411 U.S. 948, 93 S. Ct. 1924, 36 L. Ed. 2d 409 (1973); W. LaFave, Search and Seizure (2d Ed.) § 2.2 (a), p. 326, and § 2.3 (b), p. 390.

Since *Katz* v. *United States*, 389 U.S. 347, 351, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967), it is clear that "the Fourth Amendment protects people, not places." The protection that the fourth amendment affords "people," however, generally requires a reference to "place" to determine what degree of privacy can be expected and whether that expectation is one society is prepared to recognize as reasonable. *United States* v. *Mankani*, supra, 542; *United States* v. *Taborda*, 635 F.2d 131, 137–38 (2d Cir. 1980); *United States* v. *Agapito*, supra, 331; *United States* v. *Jackson*, supra, 1052; *United States* v. *Fisch*, 474 F.2d 1071, 1078 (9th Cir.), cert. denied, 412 U.S. 921, 93 S. Ct. 2742, 37 L. Ed. 2d 148 (1973).

Persons, such as the defendant, residing in an apartment, or persons staying in a hotel or motel have the same fourth amendment rights to protection from *unreasonable* searches and seizures and the same *reasonable* expectation of privacy as do the residents of any dwelling. *United States* v. *Mankani*, supra, 544; *United States* v. *Jackson*, supra; *Ponce* v. *Craven*, 409 F.2d 621, 624 (9th Cir. 1969), cert. denied sub nom. *Ponce* v. *California*, 397 U.S. 1012, 90 S. Ct. 1241, 25 L. Ed. 2d 424 (1970). That right honors the justifiable expectation that if their conversations are conducted in a manner undetectable outside their room or resi-

dence by the electronically unaided ear they will not be intercepted. *United States* v. *Burns*, 624 F.2d 95, 100 (10th Cir.), cert. denied sub nom. *Reynolds* v. *United States*, 449 U.S. 954, 101 S. Ct. 361, 66 L. Ed. 2d 219 (1980). The shared atmosphere and the nearness of one's neighbors in a hotel or motel or apartment in a multiple family dwelling, however, diminish the degree of privacy that one can reasonably expect or that society is prepared to recognize as reasonable. *United States* v. *Mankani*, supra; *United States* v. *Agapito*, supra; *United States* v. *Jackson*, supra. The occupant of any such facility who speaks in tones discernible to a neighbor or to a neighbor's invitee who may be expected to be only inches away on the other side of a common wall does not have an objectively reasonable expectation that what is said will not fall on alien ears. *United States* v. *Wheeler*, supra, 1325; *United States* v. *Burns*, supra; *United States* v. *Jackson*, supra.

Conversations carried on in any type of residence, or anywhere for that matter, in a tone audible to the unaided ear of a person located in a place where that person has a right to be, and where a person can be expected to be, are conversations knowingly exposed to the public. *United States* v. *Muckenthaler*, 584 F.2d 240, 245 (8th Cir. 1978); *United States* v. *Martin*, 509 F.2d 1211, 1214 (9th Cir.), cert. denied, 421 U.S. 967, 95 S. Ct. 1958, 44 L. Ed. 2d 455 (1975); *Ponce* v. *Craven*, supra, 625; *United States* v. *Llanes*, 398 F.2d 880, 884 (2d Cir. 1968), cert. denied, 393 U.S. 1032, 89 S. Ct. 647, 21 L. Ed. 2d 576 (1969); see W. LaFave, supra, § 2.3 (c), p. 392. Conversations knowingly exposed to the public are not within the penumbra of fourth amendment protection. *Katz* v. *United States*, supra, 351; *United States* v. *Burns*, supra; *United States* v. *Muckenthaler*, supra. The type of dwelling is inconsequential except insofar as its physical attributes increase the vulnerability of its occupants to eavesdropping by the unaided ear. See *United States* v. *Jackson*, supra.

The simple fact is that we "do not live in a vacuum." *United States* v. *Mankani*, supra, 542. One who is insensitive to his surroundings and indiscriminate in his conversation bears the risk of being overheard by an eavesdropper. *United States* v. *Taborda*, supra, 137–38; *United States* v. *Jackson*, supra, 1054; *United States* v. *Llanes*, supra. " 'It is the kind of risk we necessarily assume whenever we speak.' " *Hoffa* v. *United States*, 385 U.S. 293, 303, 87 S. Ct. 408, 17 L. Ed. 2d 374 (1966), reh. denied, 386 U.S. 940, 87 S. Ct. 970, 17 L. Ed. 2d 880 (1967), quoting *Lopez* v. *United States*, 373 U.S. 427, 465, 83 S. Ct. 1381, 10 L. Ed. 2d 462 (1963) (Brennan, J., dissenting). "Eavesdropping from a place where [an] officer has a right to be is a long-accepted technique of crime detection, not outlawed by the Fourth Amendment. If [the defendant] had talked loud enough to be overheard his expectation of privacy would be gone." *United States* v. *Martin*, supra, 1214.

The defendant believes that a different rule should apply to multiple family dwellings in general and duplex apartments in particular. We find it difficult to quarrel with the overwhelming weight of authority which we think dictates a different result.

The judgment of the Appellate Court is affirmed.

In this opinion PETERS, C. J., SHEA and GLASS, Js., concurred.

ARTHUR H. HEALEY, J., concurring. I agree with the result reached and with most of the rationale for reaching this result. I write separately only to articulate briefly my view on some broad language used in the majority opinion that is sweeping with reference to the right and reasonable expectation of privacy.

In this case, the defendant, despite the fact that the statement involved was made in his own home and not in a transitory housing arrangement such as a hotel

or motel, "talked loud enough to be overheard [so that] his expectation of privacy [was] gone." *United States* v. *Martin,* 509 F.2d 1211, 1214 (9th Cir.), cert. denied, 421 U.S. 967, 95 S. Ct. 1958, 44 L. Ed. 2d 455 (1975). As the majority notes, "[o]ne who is insensitive to his surroundings and indiscriminate in his conversation bears the risk of being overheard by an eavesdropper," so circumstanced as was the police eavesdropper in this case. The facts of this case justify the result reached.

I do not agree with the majority when it says that "[p]ersons, such as the defendant, residing in an apartment, or persons staying in a hotel or motel have the same fourth amendment rights to protection from *unreasonable* searches and seizures and the same *reasonable* expectation of privacy as do the residents of any dwelling." (Emphasis in original.) Other language in the opinion implies that such a grouping, i.e., hotel, motel or apartment, is constitutionally valid without any distinction as to whether it is transitory or permanent. Indeed, "it is the fact that hotels, as opposed to residences, are truly transitory places." *United States* v. *Mankani,* 738 F.2d 538, 544 (2d Cir. 1984). But as *Mankani* points out: "[I]t is the transitory nature of such places [hotels and motels], commonly understood as such, that diminishes a person's justifiable expectation of privacy in them." Id. That the threshold for determining what is a reasonable expectation of privacy is higher, in the first instance, where one resides and where his "effects" are than in "truly transitory places" such as hotels or motels, is illustrated by precedent. For example, "the sanctity of private dwellings [is] ordinarily afforded the most stringent Fourth Amendment protection"; *United States* v. *Martinez-Fuerte,* 428 U.S. 543, 561, 96 S. Ct. 3074, 49 L. Ed. 2d 1116 (1976); and the fourth amendment "was intended to protect against invasions of 'the sanctity of a man's home and the privacies of life.' *Boyd* v.

United States, 116 U.S. 616, 630, [6 S. Ct. 524, 29 L. Ed. 746 (1886)]." *Warden* v. *Hayden*, 387 U.S. 294, 301, 87 S. Ct. 1642, 18 L. Ed. 2d 782 (1967).

It is not wholly correct then to say, or intimate, that the defendant, a resident in an apartment (actually "a duplex apartment in a side-by-side two-family house" in Bridgeport), or persons staying in a hotel or motel have the same reasonable expectation of privacy under the fourth amendment as "do the residents of any dwelling." In *United States* v. *Jackson*, 588 F.2d 1046, 1053, reh. denied, 591 F.2d 1343 (5th Cir.), cert. denied, 422 U.S. 941, 99 S. Ct. 2882, 61 L. Ed. 2d 310 (1979), cited by the majority, for example, the court said that "despite the fact that an individual's Fourth Amendment rights do not evaporate when he rents a motel room, the extent of the privacy he is entitled to reasonably expect may very well diminish." Then again, "one's reasonable expectation of privacy in the home is entitled to a unique sensitivity from federal courts." *United States* v. *Reed*, 572 F.2d 412, 422 (2d Cir. 1978). In *United States* v. *Agapito*, 620 F.2d 324, 331 (2d Cir.), cert. denied, 449 U.S. 834, 101 S. Ct. 107, 66 L. Ed. 2d 40 (1980), also cited by the majority, the court acknowledges that "the reasonable expectation of privacy in a hotel room differs from those in a residence." Because of these recognized constitutional distinctions we should carefully factor the formulation set out in Justice Harlan's concurring opinion[1] in *Katz* v. *United States*, 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967), into the "clear" statement, cited by the

[1] As Judge Newman notes in his dissent in *United States* v. *Holland*, 755 F.2d 253, 258 n.2 (2d Cir. 1985), "[t]he reasoning of Justice Harlan's concurrence has been widely followed. See, e.g., *Oliver* v. *United States*, 466 U.S. 170, 104 S. Ct. 1735, 1740, 80 L. Ed. 2d 214 (1984); *Illinois* v. *Andreas*, 463 U.S. 765, 103 S. Ct. 3319, 3323, 77 L. Ed. 2d 1003 (1983); *United States* v. *Santana*, 427 U.S. 38, 42, 96 S. Ct. 2406, 2409, 49 L. Ed. 2d 300 (1976); *United States* v. *Reed*, 572 F.2d 412, 422 (2d Cir.), cert. denied, 439 U.S. 913, 99 S. Ct. 283, 58 L. Ed. 2d 259 (1978)."

majority, that the fourth amendment protects persons and not "places." Justice Harlan stated in *Katz* that what privacy interest of persons society is prepared to regard as reasonable often requires reference to a "place." Id., 361. This, I suggest, has not been sufficiently stressed by the majority.

Nevertheless, I agree with the result reached. The eavesdropping officer overheard the defendant with his naked ear in a place where he was legally situated. Therefore, the defendant had effectively surrendered his fourth amendment rights.

APPENDIX B

STATE OF CONNECTICUT *v.* LEONARD R. BENTON (4250)

DUPONT, C. J., BORDEN and SPALLONE, Js.

The defendant, whose conviction for drug related offenses was based on evidence obtained as a result of a wiretap and of a search of his apartment, appealed to this court after the denial of his motion to suppress that evidence. The applications for the wiretap order and the warrant authorizing the search were based in part on statements which were made by the defendant while in his apartment and which were over-

heard by a police officer in an adjacent apartment. The defendant claimed that those statements had been obtained in a search which violated his fourth amendment rights. *Held:*

1. Because the police officer overheard the statements in question without the use of any listening device, while lawfully in the adjacent apartment where his presence could reasonably have been anticipated, the use of those statements to support the wiretap and search warrant applications did not violate the defendant's fourth amendment rights.
2. The defendant's claim to the contrary notwithstanding, the application for the wiretap order provided a substantial basis for the finding of probable cause.

Argued November 6, 1986—decision released February 24, 1987

Information charging the defendant with four counts of violation of the state dependency producing drug law and one count of possession of drug paraphernalia, brought to the Superior Court in the judicial district of Fairfield, where the court, *Lavery, J.*, denied the defendant's motions to suppress and to dismiss; thereafter, the case was presented to the court, *Landau, J.*, on a plea of nolo contendere; judgment of guilty, from which the defendant appealed to this court. *No error.*

John R. Williams, with whom, on the brief, was *Sue L. Wise*, for the appellant (defendant).

C. Robert Satti, Jr., assistant state's attorney, with whom, on the brief, was *Donald A. Browne*, state's attorney, for the appellee (state).

DUPONT, C. J. The primary issue of this appeal is whether the failure to suppress statements overheard, without the use of any aural enhancement device, by a police officer stationed in an apartment adjacent to that of the defendant constituted a violation of the defendant's rights under the fourth amendment to the United States constitution.[1] The precise facts of the

[1] The defendant's written motion to suppress and his supplemental motion to suppress rely on his fourth amendment rights under the United States constitution. At the hearings conducted by the trial court, the defendant likewise relied solely upon that constitutional protection. As the defend-

case have not served as the background for a holding in any case, either federal or state, of which this court or the parties are aware.

The defendant entered a conditional plea of nolo contendere, pursuant to General Statutes § 54-94a, to a number of drug related charges after the trial court denied his supplemental motion to suppress.[2] His sole claim on appeal is that the court erred in not granting the motion. The motion was directed to evidence gathered by an electronic wiretapping and a subsequent search of the defendant's apartment, both of which were conducted pursuant to warrants.

The affidavit attached to the wiretap application recited statements made by the defendant or other persons in his apartment. Those statements were overheard by a detective investigating the defendant's alleged criminal activities. At the time these statements were overheard, the detective was in the apartment adjacent to that of the defendant, with the permission of the resident of that apartment. While listening to the defendant's statement, the detective moved between rooms in the apartment he was in, remaining between one and three feet from the wall between the apartments, and did not use any type of electronic or sensory enhancing listening device.

In order for the defendant to succeed in his claim that the trial court erred in not suppressing the evidence

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ant did not then raise the claim which he now asserts under article first, § 7, of the Connecticut constitution, and has failed to bring this claim under the principles of *State* v. *Evans*, 165 Conn. 61, 327 A.2d 576 (1973), we will not now review the state constitutional claim.

[2] The defendant was charged with possession of cocaine with intent to sell or dispense, in violation of General Statutes § 21a-277 (a); possession of cocaine, in violation of General Statutes § 21a-279 (a); possession of marihuana with intent to sell or dispense, in violation of General Statutes § 21a-277 (b); possession of over four ounces of marihuana, in violation of General Statutes § 21a-279 (b); and possession of drug paraphernalia in a drug factory situation, in violation of General Statutes § 21a-277 (c).

gathered pursuant to the search warrant issued in partial reliance upon evidence gathered by the wiretap, he must demonstrate that the overhearing of those statements, which were later relied on in the wiretap warrant and which led to the issuance of the search warrant, constituted a search in violation of the defendant's rights under the fourth amendment to the United States constitution. In determining whether a search was conducted by the police, we must undertake a two-pronged inquiry, and determine, first, whether the defendant manifested a subjective expectation of privacy with regard to these statements and to that place from which the statements were gathered, and, second, whether society is prepared to recognize that subjective expectation as reasonable. *Katz* v. *United States*, 389 U.S. 347, 361, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967) (Harlan, J., concurring).

Our threshold inquiry is whether the defendant had a reasonable expectation of privacy in statements made in his apartment which could be overheard by a person in the adjacent apartment. With regard to the defendant's subjective expectation of privacy, we recognize that "[t]he very fact that a person is in his own home raises a reasonable inference that he intends to have privacy, and if that inference is borne out by his actions, society is prepared to recognize his privacy." *United States* v. *Taborda*, 635 F.2d 131, 138 (2d Cir. 1980). In this case, the defendant's apartment was his home for the purpose of his seeking privacy and the protection of the fourth amendment. *Miller* v. *United States*, 357 U.S. 301, 307, 78 S. Ct. 1190, 2 L. Ed. 2d 1332 (1958). The record presents us with no evidence demonstrating that the defendant's actions fail to support the inference that he intended to have his privacy within the confines of his own home.

We must now examine whether his expectation of privacy in conversations carried on within his own home

is reasonable in this case. "What a person knowingly exposes to the public, even in his home, is not a subject of Fourth Amendment protection." *Katz* v. *United States*, supra, 351; *State* v. *Zindros*, 189 Conn. 228, 238–39, 456 A.2d 288 (1983), cert. denied, 465 U.S. 1012, 104 S. Ct. 1014, 79 L. Ed. 2d 244 (1984).

There have been a multiplicity of fourth amendment eavesdropping cases decided in this nation. See *United States* v. *Mankani*, 738 F.2d 538 (2d Cir. 1984); *United States* v. *Ortega*, 471 F.2d 1350 (2d Cir. 1972), cert. denied, 411 U.S. 948, 935 S. Ct. 1924, 36 L. Ed. 2d 409 (1973); *United States* v. *Llanes*, 398 F.2d 880 (2d Cir. 1968), cert. denied, 393 U.S. 1032, 89 S. Ct. 647, 21 L. Ed. 2d 576 (1969). It has widely been recognized, in cases involving apartments and hotel or motel rooms, that the technologically unaided or unenhanced overhearing of statements does not constitute a search under the fourth amendment. This view has been consistently upheld regardless of whether the eavesdropper was positioned in a common hallway of an apartment building, motel or hotel, or in an adjoining motel or hotel room. These cases do not hinge upon the single fact that the defendant is within the confines of his dwelling, but rather rely for their determination upon the conjunction of various facts, including especially the lack of sensory enhancement, the fact that the eavesdropping government agent was lawfully in position to overhear the statements, and that the presence of a person in that place could reasonably be anticipated. See *United States* v. *Mankani*, supra, 542–43; *United States* v. *Hall*, 488 F.2d 193, 198 (9th Cir. 1973); *United States* v. *Agapito*, 620 F.2d 324, 329–32 (2d Cir. 1980).

In this case, the eavesdropper neither secreted himself within the defendant's home, nor used any sensory enhancing devices. See *Lopez* v. *United States*, 373 U.S. 427, 465, 83 S. Ct. 1381, 10 L. Ed. 2d 472, reh. denied,

375 U.S. 870, 84 S. Ct. 26, 11 L. Ed. 2d 99 (1963) (Brennan, J., dissenting). The police officer here was allowed by the adjacent apartment dweller to enter and remain in his apartment during the time when the statements complained of were overheard. It is clear that the officer had a legal right to be in that position at that time. See *State* v. *Brown*, 198 Conn. 348, 357, 503 A.2d 566 (1986).

The risk of being overheard by an eavesdropper has long been recognized in the development of our fourth amendment jurisprudence. *Berger* v. *United States*, 388 U.S. 41, 87 S. Ct. 1873, 18 L. Ed. 2d 1040 (1966); *United States* v. *Martin*, 509 F.2d 1211 (9th Cir.) cert. denied, 421 U.S. 967, 95 S. Ct. 1958, 44 L. Ed. 2d 455 (1975). "The risk of being overheard by an eavesdropper or betrayed by an informer or deceived as to the identity of one with whom one deals is probably inherent in the conditions of human society. It is the kind of risk we necessarily assume whenever we speak." *Hoffa* v. *United States*, 385 U.S. 293, 303, 87 S. Ct. 408, 17 L. Ed. 2d 374 (1966), reh. denied, 386 U.S. 940, 87 S. Ct. 970, 17 L. Ed. 2d 880 (1967), quoting from the dissent of Justice Brennan in *Lopez* v. *United States*, 465, supra. Indeed, in this case, the defendant admitted at the suppression hearing that he could hear conversations occurring in that apartment in which the officer positioned himself to overhear the defendant's statements. Furthermore, the occupant of the adjacent apartment had complained to the police about noise emanating from the defendant's apartment prior to the date on which the statements had been overheard.

To hold, as we do here, that statements overheard, without the use of anything but the human ear, by a police officer lawfully stationed in an apartment adjoining that of a defendant can be used as support for an application for a wiretap without a violation of the fourth amendment to the United States constitution,

is but a slight extension of the holdings in other cases. The same result was obtained in cases involving adjoining hotel and motel rooms; *United States* v. *Mankani*, supra; *United States* v. *Agapito*, supra; *United States* v. *Fisch*, 474 F.2d 1071 (9th Cir.), cert. denied, 412 U.S. 921, 93 S. Ct. 2742, 37 L. Ed. 2d 148 (1973); and in a case involving a hallway outside the defendant's apartment; *United States* v. *Llanes*, supra. Apartment houses share many of the same features as motels. Both have shared corridors, stairs, sidewalks, yards and common walls between contiguous areas. Statements made in an apartment in a tone of voice audible to persons in adjacent apartments are the functional equivalent of statements knowingly exposed to the public. See *United States* v. *Llanes*, supra, 884 (1968); *State* v. *Zindros*, supra, 238–39.

The defendant further argues that even if the statements overheard were properly a part of the affidavit and wiretap application, the evidence gathered should have been suppressed due to the lack of reliable facts to establish probable cause in the application for the wiretap. His argument in this respect relies upon the characterization of the overheard statements as "ambiguous snippets of unrelated conversations."[3] These statements were overheard in the context of an ongoing investigation into the defendant's alleged activities as a dealer of illicit narcotics. In the context of such an extensive investigation, encompassing information gathered both by local police and the United States drug enforcement agency, which implicated the defendant in an ongoing criminal enterprise, it can hardly be said that the overheard statements were

[3] The following words and phrases were overheard in the course of the aural surveillance, and were recited in the wiretap application: "coke"; "rock"; "expecting a package"; "would have to trust him for the other five until Sunday"; "the whole package now"; "It's good stuff"; "Yeah, it looks good."

"ambiguous snippets" in relation to the illegal activity of the defendant. A sensible reading of the whole application for the wiretap warrant, including these statements, establishes a substantial basis in support of the finding of probable cause in the wiretap application. *State* v. *Ross,* 194 Conn. 447, 459, 481 A.2d 730 (1984); *State* v. *Williams,* 169 Conn. 322, 326, 363 A.2d 72 (1975). The evidence seized pursuant to the search warrant, which relied in part on the evidence gathered by the wiretap, need not be suppressed.

There is no error.

In this opinion the other judges concurred.

APPENDIX C

RULING - MOTION TO SUPPRESS
(LAVERY, J.)
TRANSCRIPT - 3/12/85

NO. 30575	SUPERIOR COURT
STATE OF CONNECTICUT	J. D. FAIRFIELD
VS.	AT BRIDGEPORT
LEONARD BENTON	MARCH 12, 1985

BEFORE: HONORABLE WILLIAM LAVERY, JUDGE

APPEARANCES

FOR THE STATE	ROBERT SATTI, JR., ESQ. ASST. STATE'S ATTY.
FOR THE ACCUSED	LINDERMAN & MASTRONARDI

Virginia Stefanko
Court Monitor

THE COURT: Good morning ladies and gentlemen. On August 17, 1984, the defendants filed a motion to dismiss. That is the defendant, Leonard Benton, and I believe that your defendant joined in that motion.

MR. LONERGAN: That's correct.

THE COURT: All right. The defendants argue that 21a-277 is unconstitutional because it is a lesser included offense to 21a-278, but does not provide the same exemption for drug dependent persons as is provided in 21a-278. Defendant claims that the application of Section 21a-277 all of the Connecticut General Statutes, deprives him and her of due process and equal protection because he and she is a drug dependent person and should be entitled to raise this as an

affirmative defense, cause he and she would be entitled to raise this as an affirmative defense, cause he and she would be entitled to raise it they been charged with the greater offense under 21a-278. The statutory scheme, they claim, is unconstitutional argues the defendant because those charged wit the greater offense are provided more protection than those charged with the lesser offense. Equal protection analysis must commence with the determination of whether a legislative classification is invidious or whether the legislation impinges upon a fundamental right. That's FRAZIER VS. MANSON, 176 Conn. 636, 645, 1979. The classification is invidious or impinges a fundamental right and is unconstitutional unless justified by a compelling state

interest. HORTON VS. MESKILL, 172 Conn. 615, 640, 1977. Otherwise, the party challenges the statute, must establish that the statutory classification is without rational basis. UNITED ILLUMINATING VS. NEW HAVEN, 179 Conn. 627, 636, 1980. The court finds that the statute does not create a suspect or invidious classification. As an example, race or national origin would be a suspect classification. To differentiate between a seller of drugs who is drug dependent and one who is not drug dependent, is not an invidious or suspect classification. Although due process protects the rights of a defendant charged with a crime to establish a defense, in STATE VS. MILLER, 186 Conn. 654, 660, 1982. The right only attaches when a defense the defendant

wishes to raise will tend to negate the existence of an essential element of the crime. Since the state need not prove lack of drug dependence under 21a-277, the defendant does not have a fundamental right to raise dependency as a defense. Therefore, the rational standard is applicable. The statutory scheme of 21a-277 and 21a-278 with respect to the affirmative defense of drug dependency is rationally related to a legitimate state purpose. Section 21a-278 targets large dealers of dangerous drugs and imposes a sentence of up to life in prison. Section 21a-277 targets the smaller dealers of dangerous drugs and provide the maximum sentence for first offenders of 15 years and $50,000.00. It is logical for the legislature to want to exempt of a possible

life sentence, those dealers who because of their dependency must deal in large quantities to support their habit. The target dealers under 21a-278 are those who deal in large quantities of dangerous drugs purely for profit. However, those individuals acquitted under 21a-278 because of drug dependency, may still be convicted under 21a-277, a lesser included offense to 21a-278. Furthermore, 21a-277b provides for conditional release as an alternative to incarceration, presumably so that the defendant can get drug treatment. This alternative is not available under 21a-278. For the same reason, the affirmative defense is available under that section. It is submitted that the statutory scheme, and the court so finds, of 21a-277 and 21a-278 as rational and therefore, not

unconstitutional. The motion to dismiss is denied.

MR. MASTRONARDI: We take exception, Your Honor.

THE COURT: Noted.

MR. LONERGAN: Exception, Your Honor.

THE COURT: Noted. The defendants, on March 4th, 1985 filed a second motion to dismiss. The defendants seek dismissal of the information against them on the ground that they have been denied their Sixth Amendment right to counsel, due to the alleged infiltration of the defenses, camp by the state. Defendants contend that subsequent to their arrest and procuring of counsel, a government informant who was a close associate of the defendant, Benton, and known to the defendant, Cassidy, elicited information from the defendants

regarding the defense of their cases for the purpose of disclosing the defense strategy to the state. The defendants have been afforded an evidentiary hearing and an opportunity to prove their allegations. It is noted for the record, that the court, although denying any testimony by Ann Griffin on events occurring prior to the date of arrest, did allow testimony to be elicited on the date of arrest and subsequent to that date and the defendants declined to take testimony. The burden is on the defendants to show that their Sixth Amendment rights have in fact, been violated and also to show actual and substantial prejudice to their cases as a result. U. S. VS. MORRISON, 101 Supreme Court, 665, 668, 1981. Specifically the defendants have the burden of proving (1)

that the informant in fact, obtained information concerning trial strategy from the defendants, (2) that the informant disclosed the information to the government and (3) that the conduct either resulted in or presents a substantial threat of actual prejudice to the ability of the defendants' counsel to provide adequate representation at trial or to the defendants' ability to receive a fair trial. U.S. VS. BOFFA, 89th Federal Rules Decision, 523, 533, 1981. The defendants have failed to prove both the second and third prongs of the MORRISON test. The court has received no testimony either from the defendant or from the state that the informant or anyone else disclosed the defense strategy to the government. Therefore, even if the information defendants claim to have disclosed to Ann

Griffin was conveyed to the state, there's been no showing the defendants have been or could be prejudiced. Defendants alleged disclosures were general in nature and would give no advantage to the state. Additionally, much of what was allegedly related subsequently became public knowledge as a result of civil suits in which the defendant, Benton, is a plaintiff. Since the defendants have failed to meet their burden of proof, the motion to dismiss is denied. The second motion to dismiss.

MR. MASTRONARDI: Exception, Your Honor.

MR. LONERGAN: Exception, Your Honor.

THE COURT: Exceptions are noted in both defendants. We'll now proceed to the defendants' supplemental motion to suppress

dated February 25th, 1985. It is agreed and stipulated by counsel that the July 16th, 1984 motion of the defendants to dismiss, is supplanted and replaced by its supplemental motion to -- I mean to suppress, is supplanted and replaced by its supplemental motion to suppress of February 25th, 1985. The motion to suppress is denied. (A) paragraph 8b through 8i are background material and they set forth in full, all prior wiretaps involving the subject as is required by Section 54-41 subsection 8 of the Connecticut General Statutes. In addition, paragraphs 8b through 8i set forth how the affiant knew the informant set forth in paragraph 8j and following, was a reliable and confidential informant and that the informant got his or her information first hand. The affiant

through the investigation of his office, in cooperation with the Drug Enforcement Administration, knew the informant to be reliable and credible and presented sufficient facts to the three judge panel on reliability and credibility. All right. I'll take this one, one by one. Paragraph (e) even if the Sayball wire was unlawful, the court has excised it from any consideration of a finding of probable cause. However, as a prior wiretap, in which the subjects were mentioned, it must by statute be set forth in the affidavit, Section 54-41. (c) and (e) set forth the same reasons. Violation of defendants' Fourth and Fourteenth Amendment rights by illegal search and seizure by James Gallick, investigation for the state's attorney's office on January 6th, 1984. On

January 6th, 1984 a confidential and reliable informant notified the Bridgeport police and the state investigators that the defendant, Benton, expected to receive a large shipment of cocaine on that evening. Acting on the information, Inspector Gallick approached the residence of Dr. Bell of the adjoining duplex to the defendant Benton's duplex and obtained Dr. Bell's consent to conduct a visual and oral surveillance of the defendant Benton's apartment. The surveillance was conducted without the use of an artificial listening device, with Inspector Gallick seated at a table approximately one and one half to three feet from the adjoining wall. From this position, Inspector Gallick heard what he identified as defendant's voice engaged in a telephone conversation. In the course

of the conversation, the Inspector heard defendant say he was expecting a package. That he had five right now in his pocket. That the person would have to trust him for the other five until Sunday and that he wanted the whole package now. Defendant then left the apartment. Later that evening, defendant returned to the apartment and Inspector Gallick heard conversations between the defendant and others, during which defendant used the term "coke" and "rock". Defendant was also heard telling male visitor to his apartment that, "it's good stuff," to which the visitor replied, "yes, it looks good." Defendant contends that in Inspector Gallick in stationing himself in the adjoining apartment and eavesdropping on defendant's conversations engaged in an

illegal warrantless intrusion into a constitutionally protected area in which the defendant enjoys a reasonable expectation of privacy. Therefore, the defendant argues all statements overheard by Inspector Gallick must be suppressed and must also be excised from the state's attorney's affidavit in support of its application for a wiretap order. The Fourth Amendment protects people and not places. Therefore, the defendant need not show a technical trespass in order to establish an infringement on his right to privacy. KATZ V. UNITED STATES, 389 U.S. 347, 1967. Whether the defendant's Fourth Amendment rights were violated turns on whether he had an expectation of privacy and whether that subjective expectation was one that society recognized as reasonable.

KATZ. Also STATE VS. ZINDROS, 189 Conn. 229, 1983). If the defendant had a reasonable expectation of privacy in conversations audible through the wall of the adjoining apartment, then the overhearing by Inspector Gallick amounted to a search, which must be subject to the test of reasonableness under the Fourth Amendment. See STATE VS. ZINDROS, mentioned above. Whether a person has exhibited a subjective expectation of privacy requires the detached evaluation of the facts and circumstances of the particular case. ZINDORS at 240. It will be assumed that the defendant did have general expectation that what he said was in the confines of his apartment would remain private. Whether the subjective expectation of privacy was reasonable

depends on a three prong analysis U.S. VS. ACOPEDO, 2620 Fed. 2nd 324 2nd Circuit, 1980. First, how the surveillance was conducted. Second, was the law enforcement officer legally in the place from which he conducted. Second, was the law enforcement the defendant was when he was surveyed. Officer Gallick heard the defendant's statements with his naked ear. The Fourth Amendment protects conversations that cannot be heard except by means of artificial enhancement. 1 LAFAVE, Search and Seizure, Section 2.2 at 270-72, 1978. No justified reliance is present when a person's in premises activities may be readily observed or heard by neighbors so there's not a search for an officer to see or hear those activities from a neighbor's property. LAFAVE 2.3 at 303.3 An

individual is deemed to have assumed the risk of being overhear when he speaks so others can be heard. HOFFA VS. UNITED STATES, 385 U.S. 293 page 303, 1966. U.S. VS. MANCANI, 738 Fed 2nd. 538, 2nd Circuit, 1984. U.S. VS. ACOPEDO, as stated before and U.S. VS. LLANES, 398 Fed. 2nd, 880 2nd Circuit, 1968. Officer Gallick had obtained the consent of the defendant's neighbor, Dr. Bell, to conduct the surveillance from the neighbor's apartment. Although the defendant may not have anticipated the Inspector's right to be there, U.S. VS. MANCANI, 534, he could not reasonably rely on his neighbor to withhold consent or to possibly notify the police himself. The more difficult of the three prongs is the place where the defendant was when he was being surveyed. A home, be it

a single or multi-dwelling unit provides a greater expectation of privacy than does a hotel room. U.S. VS. MANCANI at 544. However, a conversations carried on in an tone of voice quite audible to a person standing outside the home, or conversations knowingly exposed to the public, U.S. VS. LLANES, 398 Fed. 2nd 880, 2nd Circuit, 1968. Although in LLANES the eavesdropper was situated in a common hallway, and hence a quasi-public area, that distinction should not be critical. The determination of whether defendant had a justifiable expectation of privacy should not turn on whether the conversations were heard through a door or a wall. The conversations were heard with the naked ear from a place the Inspector had a legal right to occupy. The defendant did not

have a reasonable expectation of privacy in the content of those conversations. Paragraphs (d), (e), (f), and (g) are handled as one. The court find that paragraphs 8j-1 through 14, sets forth sufficient probable cause for an independent magistrate, aka, a three judge panel, to find probable cause independent of any other paragraphs of the affidavit. Inspector James Gallick relying on information from a reliable and confidential informant, in a visual and oral surveillance heard the defendant, Benton, discuss drug transactions from the duplex adjoining the defendant Benton by his naked ear. A surveillance of the defendant and a female followed -- a surveillance by the state's attorney inspector followed the defendant Benton to

Milford. Lost the defendant at a red light, picked up the surveillance again in Milford. The defendant returned to the apartment with a large plastic bag. The defendant was overheard talking to the female about "coke" and "rock." A white male entered the apartment about 8:45 and further conversation about drugs was heard. The car with the white male was traced to a Eugene Teto, a principal of this wiretap application and a person known to the state police as dealing in drugs. The three judge panel, when informed of the reliability of the informant in the affidavit, and had the personal observations of the inspectors to verify the information of the informant was reliable and credible. STATE V. ROSS, 194 Conn. 447 at 462 to 65, 1984. STATE V.

BEMBER, 183 Conn. 394, 410-11, 1984. A common sense approach by the three judge panel, found probable cause existed on facts that occurred within the statutory 20 days and this court agrees in that finding. Paragraph (h). The objectives set forth in paragraph 11b and paragraphs 12 and 13, are clear and definite and are neither vague nor broad, but are as clear and as defined as the English language allows in the investigation of a drug network and its sources of supply. Paragraph (i). The court finds the stated objectives was not attained prior to the wiretap. It was not even fully attained at the end of the wiretap. The use by the parties of initials, codes, the involvement of the defendant's family and the large amount of drug related calls by people with similar

initials made it very difficult for the monitors and the surveillance team to put the pieces of puzzle together. The defendant testified he introduced everybody by initials and that he didn't tell the witness Griffin who was a supplier, but she knew -- but that she knew who the suppliers were, was purely conjecture on the defendant's part. (k) The defendant failed to sustain his burden of proof as to minimization. The court finds many drug related calls were made. Initials, not names were used. Codes were used and that ordinary family calls were in many instances, drug related. The court find that the monitors complied with statutes and regulations and procedures with reference to minimization. There are a large number -- not only a large number of

code related calls, there were over 619 intercepts. Forth-five percent of which were found to be pertinent. Fifty-five percent were found to be non-pertinent. The court finds that disconnects were made. That they did not -- the monitors did not use the full 24 hours that they were entitled to use and only used part of each day and that they terminated it three days earlier. As far as paragraph (i), there's no legal or factual basis shown by the defendants why both phones should not be tapped and were legally done so. The court further notes that the defendant has made no showing him to entitle him to a FRANKS hearing, but on the matter of the Fourth Amendment issue, the court did give the defendant the opportunity to present evidence and whether the evidence from the

affidavit or the evidence presented in testimony in the court, did not differ substantially and that the court, whether from the evidence or the affidavit, finds that the Fourth Amendment and the Fourteenth Amendment were not violated by Inspector Gallick and thus the motion to suppress is denied. The court further notes that the reason it did not allow the Ralston wiretap to be marked as an exhibit because it was of no significance to the court. Presented no material evidence to the court and meant nothing to the court in its findings that there existed probable cause that the three judge panel and the state's attorney's officer complied in entirety with the statute concerning drug wiretap applications and its execution.

MR. MASTRONARDI: Exception, Your Honor.

THE COURT: Exceptions are noted.

MR. LONERGAN: Exception, Your Honor.

MR. SATTI: The state has an exception to the portion of the ruling that you had on considered the 20 days and the first paragraph, I believe, it 8j through whatever. I had argued in my brief more of that should be considered. Please note an exception on that.

THE COURT: Exception is noted.

MR. MASTRONARDI: Your Honor, before we go any further, may I request a determination of our specific factual findings.

THE COURT: The facts findings that I thought were pertinent to the motions have already been found.

MR. MASTRONARDI: In that case, Your Honor, I would request leave to file a

motion for rectification pursuant to STATE VS. OSTROWSKY, STATE VS. ALMEDA, STATE V. LAFERTY, KAPLAN VS. KAPLAN, ANDOLFI AUTO PARTS. If the cites are required, I can give them.

THE COURT: Well why don't we take them one at a time.

MR. MASTRONARDI: Well let's start with STATE VS. LAFERTY, 191 Conn. 73, 189 Conn. at 303 at 314. 186 Conn. 287, 186 Conn. 387 and 388. 181 Conn. 217 and also pursuant to the Connecticut Rules of Appellate Practice, Your Honor, Section 3082. What I'm seeking here is leave to file a motion that will request rectification and refinement of the court's factual finding.

THE COURT: Well that's subsequent to the trial.

MR. MASTRONARDI: No Your Honor, it's based on the court's findings here, not trial findings.

MR. SATTI: I imagine the defendant can file any motion he wants. It's not going to affect picking a jury. I mean he cites appellate rules of procedure. There's no appeal.

THE COURT: I certainly have no problem with that. I'll go read the cases. Meanwhile, get me a jury panel.

APPENDIX D

GALLICK TESTIMONY

JAMES L. GALLICK, 130 Weibe Avenue, Stratford, Connecticut, having first been duly sworn, took the witness stand and testified as follows:

DIRECT EXAMINATION BY MR. MASTRONARDI

MR. MASTRONARDI: Good morning, Inspector. My name is Gary Mastronardi.

A Good morning.

Q Inspector, would you tell us how you're employed?

A I'm presently employed by the state of Connecticut as a police inspector,

assigned to the State's Attorney's office in Bridgeport, Part "A".

Q How long have you been a police inspector?

A I'm in my third year, sir.

Q When you became a police inspector, did you go through any training?

A Well I attended police academies. I've been in several schools.

Q Well prior to becoming -- becoming an inspector, were you -- were you a police officer?

A Yes, sir, I was.

Q Where were you a police officer?

A The town of Stratford.

Q And how long were you a police officer?

A Twenty-seven years, sir.

Q And during that 27 year period, did you -- did you go through police training?

A Yes, sir, I did.

Q Did you take courses?

A Yes, sir.

Q Did any of the courses involve-- well were any of the courses legal courses?

A They were all legal courses, sir.

Q In which you were taught legal concepts of law enforcement?

A Yes, sir.

Q So is it fair and accurate to say that you are -- you have a grasp of the concept of probable cause?

A Yes, sir.

Q Now before coming here today, Inspector, did you go through any preparation?

A Yes, sir.

Q Could you tell us about that preparation? What it consisted of?

A Well I read the reports on the case that I'm here to testify on and I talked to Mr. Satti.

Q What -- what did you talk to Mr. Satti about?

A Of the part I took in the investigation, sir.

Q Well would you tell us what you said to Mr. Satti and what Mr. Satti said to you?

MR. SATTI: I'm going to object. I don't see the relevance at this point. I thought we were focusing on what he did on January 6th.

MR. MASTRONARDI: I think --

MR. SATTI: What I discussed with a witness I think may be critical.

MR. MASTRONARDI: Your Honor, if I remember right, yesterday Mr. Satti was about to make me a witness based on what I spoke to --

THE COURT: Mr. Mastronardi, let's get on with it. Sustained. he spoke in preparation for today's testimony to Mr. Satti. And he's read the reports. He's your witness. You know, you can impeach him.

MR. MASTRONARDI: He's not my witness, Your Honor. He's the states's. He's definitely an adverse witness.

THE COURT: No, you called him.

MR. MASTRONARDI: He's definitely an adverse witness though.

THE COURT: All right.

MR. MASTRONARDI: And I think I am entitle to impeach.

MR. SATTI: I would say, Your Honor, that he called the witness and there's been no finding of hostility.

THE COURT: Yes. You've got -- we haven't anything except that he's been an inspector and a policeman.

MR. MASTRONDARDI: All right. All right. I'll move it.

Q Inspector, do you know an individual named Leonard Benton?

A Yes, sir, I do.

Q Isn't it a fact that in 19 -- over the past few years, you've been involved in an investigation and Mr. Benton was the target of this investigation?

A Yes, sir, over the past few years.

Q About how many years would you say?

MR. SATTI: I'm going to object. It's outside the scope of January 6th, 1984.

MR. MASTRONARDI: Your Honor, all I'm doing is laying the foundation.

THE COURT: He's sustained.

Q Would it be fair and accurate to say that between the fall of 1983 and January 6th, 1984, you were involved in an investigation in which Mr. Benton was the target?

A Yes, sir.

Q Now Inspector, you know an individual named William Bell?

A Yes, sir. I know the name, yes, sir.

Q Could you tell us when you first met Mr. Bell?

A Around December of '83, I'd say, sir.

Q And tell us how it was that you came to meet Dr. Bell?

A I contacted him, sir.

Q How did you come to contact Dr. Bell?

A On an investigation that was brought to our attention, sir.

Q Who brought this investigation to your attention?

A The Bridgeport Police Department.

Q Will you tell us who at the Bridgeport Police Department brought this --

THE COURT: Sustained.

Q -- investigation --

MR. SATTI: Objection, Your Honor.

Q -- to your attention?

THE COURT: Sustained.

MR. SATTI: Objection.

MR. MASTRONARDI: Your Honor, this is relevant and if Your Honor would like an offer of proof, I would be prepared to make an offer of proof, but not in front of this witness.

MR. SATTI: My claim is that there's a civil suit pending and he's now fishing for the civil suit.

MR. MASTRONARDI: Your Honor, I'd like

to put this swan song that the state has been singing to rest for the last time.

THE COURT: Mr. Mastronardi --

MR. MASTRONARDI: Whether I have a civil suit or a criminal suit is irrelevant.

THE COURT: -- Mr. Mastronardi, there was an objection. I sustained it. Your exception is noted. Proceed.

MR. MASTRONARDI: Your Honor, I would still like to make an offer of proof because I would except.

THE COURT: You've got an exception. No. Let's move. He's on for the limited purpose of the illegal search and seizure. You got him on for another purpose, state it. But I understood -- and I adhered to your request to listen to him concerning the events of the illegal search and

seizure. And that is what you're going to be using the Inspector for this morning. If you have other things you want to use him for, when that comes up, we can do it.

MR. MASTRONARDI: Is Your Honor holding that I cannot make an offer of proof here on the record?

THE COURT: An offer of proof could-- Inspector, step out of the room for a minute.

WHEREUPON THE INSPECTOR STEPPED OUT

THE COURT: What's your offer of proof?

MR. MASTRAONARDI: Your Honor, Inspector Gallick came to contact Dr. Bell pursuant to contact that Dr. Bell had made. Complaints that Dr. Bell had lodged with the Bridgeport Police Department about

noise coming through the wall. Now what I'm -- all I'm trying to prove here is that the ultimate objective that I'm trying to prove here is that on the evening that Inspector Gallick showed up, on January the 6th, the evening that he went to see Dr. Bell, he knew full well that it was possible to hear through the wall and that in fact, the reasons why he went there was to listen through the wall.

THE COURT: Ask him the question.

MR. MASTRODARDI: But Your Honor, I'm trying to lay a foundation here. I'm trying to develop a record. And I think I'm entitled.

THE COURT: Well ask him a question of whether he knew ahead of time that he could listen through the wall. You haven't laid your foundation.

MR. MASTRONARDI: Well, I'm -- my next question after I asked him who, I was going to ask him what the policeman said to him.

THE COURT: Why do you need to know who?

MR. MASTRONARDI: Because if the call was referred to Special Services -- to the narcotics -- THE COURT: He said he got it --

MR. MASTRONARDI: section of the Bridgeport Police Department -

THE COURT: What?

MR. MASTRONARDI: It bears on whether-- it bears on the narcotics investigation. There was a narcotics investigation.

THE COURT: It says so here in the affidavit.

MR. MASTRONARDI: But Your Honor, I'm trying to show that it was an object of

this investigation for -- to go to Dr. Bell's apartment and listen through the wall.

THE COURT: All right, bring the Inspector back. Your offer of proof. Ask your question. Go ahead.

MR. MASTRONARDI: Thank you, Your Honor.

Q Inspector Gallick, could you tell us who at the Bridgeport Police Department contacted you?

MR. SATTI: Objection. It's already sustained. I don't think it's changed.

THE COURT: Correct.

MR. SATTI: I have no objection if we tell the division, but I don't want him to

mention any names. I don't think he has to.

THE COURT: Could you tell what division? Does that satisfy you? What division of the Bridgeport Police --

MR. MASTRONARDI: No, Your Honor, it does not.

MR SATTI: My claim then is that I'm claiming a privilege. There's a civil suit pending and he's now trying to find out who he can sue. He doesn't know who the people are --

MR. MASTRONARDI: Your Honor, violations of constitutional rights are relevant in criminal actions and civil actions. It doesn't make a hill of beans and I'm tired of this swan song.

THE COURT: I'll reverse my opinion. Answer the question, if you an remember it.

A Well, Your Honor, I believe around December 8, the Special Services Division contacted my senior inspector, Jack Solomon and this is where -- my first contact with the investigation.

Q So it was the Special Services Division?

A I believe it was.

MR. SATTI: Object. He doesn't know.

THE COURT: What?

MR. SATTI: He doesn't know. They didn't contact him. I'm going to object.

THE COURT: Well it's already in and it's too late. You didn't object.

MR. MASTRONARDI: I wasn't allowed to ask Inspector Solomon that yesterday while he was on the stand.

THE COURT: Mr. Mastronardi, ask questions. Don't give me any more speeches.

Q Could you tell me the substance of the information that was conveyed to you at the time?

MR. SATTI: I'd like to have a clarification. What time we're talking about? From whom --

THE COURT: On that date when he got--

MR. MASTRONARDI: By the Bridgeport Police. By the Special Services Division.

MR. SATTI: Well he didn't indicate-- he indicate he was assigned by Inspector Solomon, not that he had this information. He was assigned by Inspector Solomon.

THE COURT: Well he's asking what the basic information he received to go act on. Isn't that what you're asking?

MR. MASTRONARDI: Yes, I am, Your Honor. Your Honor, the state is the state whether it be Inspector Solomon or --

THE COURT: Mr. Mastronardi, I asked you a question. What was the basic information you had that you acted on?

A I received it from Inspector Solomon of the possible activity of narcotics in the area of Mr. Benton's residence.

Q At the time, was your office actively involved in an investigation of Mr. Benton?

A I don't recall that, sir.

Q In December of 1983, --

A Well that's the time I first --

Q -- was your office involved?

A Yes, that's the first time I heard it, yes. We hadn't started an investigation at that -- up to that point and we -- I had heard of the activity, yes, sir.

Q At the time you were told about this information from the -- that had come from the Bridgeport Police Department, did the Bridgeport -- were you also told that it was possible to hear through Dr. Bell's wall into Mr. Benton's apartment?

A I'm wrong on the time. It was November of '83, sir. That's -- that's give or take. I believe it was back early in November when we first heard about the investigation. The activity.

Q It was back in November when you first heard about Dr. Bell?

A No, no, about the activity of the -- of the residence, sir. It was November -- November, '83.

Q Well let's go back to the original question. When did you first hear about Dr. Bell?

A When I first heard about Dr. Bell, I cannot put a time on it, sir. I'd be-- I'd only be surmising. I can't put a time on it when I first heard it, no.

Q Well would it be fair and accurate to say that it was -- or would it be more than a month before January the 6th?

A Yes, sir, I would say so.

Q Would it be more than two months?

A No, sir.

Q So somewhere between two months--somewhere between January 6th and November of 1983, you learned about the existence of Dr. Bell?

A I would say that's correct, sir.

Q Now when you learned about the existence of Dr. Bell, would you tell us in what context you learned about it?

A He's the neighbor of Mr. Benton's.

Q Did you also learn that he had paper thin walls?

A I heard of several complaints of noise complaints coming from Mr. Bell to the Bridgeport Police Department.

Q Is it your testimony then, that your office learned from the Bridgeport Police Department, that there were complaints of noise through the wall --

MR. SATTI: I'm going to object.

Q -- of Mr. Benton's apartment?

THE COURT: There's an objection.

MR. SATTI: It starts out what he thought he heard. We're talking about a bunch of hearsay now. Then he wants to pick out what the office heard. I don't think that's a fair question. It's what this gentleman knew at the time.

THE COURT: That's all he asked. You're limited to that. What he knew.

MR. MASTRONARDI: No, Your Honor. I want to know what the state knew. I'd like to know what the state knew --

MR. SATTI: I don't know what the governor knows.

THE COURT: Mr. Mastronardi, he's your witness. You ask him what he knows. If you want to bring someone else up, bring them. But he is the witness.

Q Did there come a time when you met with Dr. Bell?

A Yes, sir.

Q Could you tell us about when that time was?

A I would say late '83, sir.

Q Sometime between November of '83 and January 6th --

A Yes, sir, that's --

Q -- of '84?

A -- fair. Yes, sir.

Q Where was it that you met with Dr. Bell?

MR. SATTI: I'm going to object, Your Honor. I don't see any relevance at this point. We're talking about what happened on January 6th. Who cares whether he met with him.

THE COURT: Well I'll overrule you.

MR SATTI: Well I claim it as part of a confidentiality. I don't think he has to disclose all his meetings. And I don't know if it's going to get into a confidential informant area yet.

THE COURT: It won't get into a confidential informant. The only conversations he's going to ask about is between Dr. Bell and himself.

MR. SATTI: I still claim places.

THE COURT: Overruled.

MR. SATTI: I still claim places because it may well tell us who the

informant is. And that's why I'm objecting. I'm claiming that right.

THE COURT: Well was there a meeting between you and the doctor or were there other people present?

A There was one other present, sir.

THE COURT: And was the other person present a police officer?

MR SATTI: I still claim it. I still claim that there's a confidential informant and I'm claiming my right not to have anything disclosed. I don't mind talking about what happened, but I don't want to have places and times set up so clearly, if I can help It.

THE COURT: On this question, it's overruled. Answer the question.

Q Tell us where you met with Dr. Bell?

A At Dr. Bell's office in Monroe.

Q And you went to Dr. Bell, is that correct?

A Yes, sir.

Q And you testified that you were not alone?

A That' correct, sir.

Q Who went with you?

A DEA agent, Dale Seymour, assigned to the Bridgeport office.

Q Special agent, Dale Seymour. Now during your meeting with Dr. Bell, did Dr. Bell tell you that he had paper thin walls?

A Not that -- not that type of words. He did say he had a lot of complaints on noise coming from the

apartment. He could hear a lot of sounds, yes, sir.

Q Would it be fair and accurate to say that Dr. Bell told you that it was possible to hear through the wall in Dr. Bell's apartment into Mr. Benton's apartment?

A Dr. Bell stated there were sounds coming from the apartment, yes, sir. You could hear them from his apartment. That's correct, sir.

Q So that there's no question at all, that sometime between November, 1983 and January 6th, 1984, you knew full well that it was possible to hear through a wall from Dr. Bell's apartment into Mr. Benton's apartment? Is that correct?

MR SATTI: I'm going to object. It's a leading question. It's his witness.

THE COURT: Hostile witness. Overruled.

MR SATTI: Could I have an exception because I don't think there's been any showing of hostility.

THE COURT: Exception. Go ahead.

A Would you repeat the question, please?

MR. MASTRONARDI: Would you play that back for us, please?

WHEREUPON THE QUESTION WAS PLAYED BACK

A Not personal knowledge, no, sir. I had heard from the doctor that he had

heard sounds coming from the apartment, yes.

Q Was there any reason for you to disbelieve Dr. Bell when he told you that?

A No, sir.

Q Between the date of your first meeting with Dr. Bell and January 6th, 1984, did you have occasion to meet again with Dr. Bell?

A I didn't meet him, no, sir. One telephone conversation.

Q Oh, by the way, Inspector, while you and Mr. Seymour were interviewing Dr. Bell, did you take any notes?

A No, sir.

Q Did special agent Seymour take any notes?

A I don't know that, sir. I don't know what he was doing.

Q You were there. Did you see him taking notes?

A No, sir, I was talking to Dr. Bell, sir.

Q Did you make a report of that conversation with Dr. Bell?

A No, sir.

Q Now I don't recall whether I asked you this question. If I did, forgive me. Between the first meeting and January 6th, 1984, did you have occasion to meet again with Mr. Bell?

A I contacted him once by telephone.

Q Did you ask -- at that time, did you ask Dr. Bell if he wa still hearing things through his wall?

A No, sir.

Q Did you ask Dr. Bell if it would

be possible for him to make his apartment available to you sometime?

A Yes, sir, I asked him for the apartment. Yes, sir, I did.

Q Can you tell me about when that was?

A It had to be latter '83 again, sir.

Q Well was it -- was it -- you think January 6th as the focal point. Was it a week before January 6th?

A It was prior to January 6th, yes, sir. Very -- very close to January 6th, I'd say. Yes, sir.

Q All right. Now I'd like to direct your attention to January 6th, 1984. I'm going to present you with the -- with state's Exhibit "A" and direct your

attention to the affidavit. I'll tell you what page and paragraph.

THE COURT: You looking for page 12, paragraph "j?"

MR MASTRONARDI: Yes, Your Honor. Page 12, paragraph "J."

Q Now the paragraph states, does it not, that on January 6th, you were assigned by Inspector Solomon to attempt to conduct a surveillance in the area of 200 Westfield Avenue in Bridgeport after Inspector Solomon and yourself had received information from a confidential informant that Lennie was expecting to receive a shipment of cocaine from an unknown source on said evening. Is that correct?

A Yes, sir.

Q Now without telling me the name of the informant, without comprising the informant in any way, could you tell me if that informant gave you a basis for his knowledge?

MR. SATTI: I'm going to object, Your Honor. I claim it under the privilege. The paragraph he says --

THE COURT: Well that only requires a yes or no answer. I'll overrule your objection with a yes or no answer.

Q Did he tell you how he knew it?

A No, he did not, sir.

Q Has it been your experience, Inspector, that you take statements by informants on face value without asking them to give you a basis --

MR. SATTI: I'm going to object. I don't see the relevance at this point. The question is on this paragraph only. He said it was correct. Now he's going into something else. I don't think it's important.

MR. MASTRONARDI: Your Honor, it goes to this gentlemen's state of mind on the day that he went to Mr. Benton's -- to Dr. Bell's apartment. And that's what's at issue here.

MR. SATTI: He's attacking the reliability of the information. I don't think he's doing it properly. I think it has to stand on the ground that it's true and reliable in the affidavit.

MR. MASTRONARDI: I'm not attacking the

reliability, You Honor. I'm putting in issue this witness' state of mind.

THE COURT: Sustained.

MR. MASTRONARDI: Exception, Your Honor.

THE COURT: Noted.

Q How long -- again without providing any information that could comprise the identity of this informant-- how long before you actually went to Inspector Gallick's (sic) apartment that night, was it -- I'll start over again. What was the period of time between when you received the informant's information and when you actually went to Inspector Gallick's (sic) apartment?

MR. SATTI: I'm going to object, Your Honor. Now he's going to be able to get in and find out who the informant is and I claim it. I claim the right. He's going around piece by piece. This is what we talked about yesterday. Knocking down the blocks.

THE COURT: What's the difference.

MR. MASTRONARDI: Again, Your Honor, I'll make an offer of proof, but not with him here.

THE COURT: All right. Step out.

WHEREUPON THE WITNESS STEPPED OUT OF THE COURTROOM

MR. MASTRONARDI: Your Honor, I would direct the court's attention to -- not only to our memorandum of law, but to UNITED

STATES V. CASE. In UNITED STATES V. CASE, one of the considerations that the court found to be of critical importance was the fact that the agents had plenty of time that day to go and get a warrant and they didn't. They circumvented that normal, required judicial process and went and did what they had to do on their own. My point is the only point that I'm trying to make is, that this witness had more than enough time to go and get judicial review of the decision to listen through Dr. Bell's wall into Mr. Benton's apartment. It's highly relevant, Your Honor. Its' highly probative on the issue of this witness' intent.

MR SATTI: It seems to me that the only thing that's going to be at issue is the

voice that was heard or sounds heard from the apartment.

THE COURT: He's saying that since they had knowledge that there may be a drug transaction in the defendant's apartment, that he could have gotten a search and seizure warrant.

MR. SATTI: But that's for the drugs, not for the voices. there's no showing at all that any voices would be part of the search warrant if they could get it. That's my claim.

MR. MASTRONARDI: I thought that the failure to obtain a search warrant was a violation of constitutional rights. That's always been my belief.

MR. SATTI: I think it's important as to what is searched. If you're looking for drugs --

THE COURT: The question also in this case, is there a search?

MR. MASTRONARDI: There's a seizure of words, Your Honor.

THE COURT: Is there a search and seizure? Well that's a question. That's your claim.

MR. MASTRONARDI: I have no problem with that. There's law on it, Your Honor, and I'll submit if that's an issue.

THE COURT: Fine. That's one of the issues.

MR. SATTI: What concerns me --

THE COURT: The question is, he wants to lay down -- he wants to know the time differential to establish -- and his argument -- he has a right to argue. He has a right to draw evidence to argue that, all right.

MR. SATTI: I'm going to claim the privilege of the informant -- having speaking to me about the informant because I think it's going to tip the parties off to know exactly who's talking to him. If it was the date, the same date, the day before or three weeks before. _ They're going to know who they talked to. And who's going to be the one who's going to help. That's going to give up the informant. And I claim it very strongly in this case. I know that he has a right to--

THE COURT: Well I think he has a basic constitutional right to know the time differential when he knew, so I'll overrule you on that. Put him back on.

MR. MASTRONARDI: Thank you, Your Honor.

MR. SATTI: May I have an exception to that please?

THE COURT: Exception.

WHEREUPON THE INSPECTOR RETURNED TO THE WITNESS STAND

MR. SATTI: If I may, Your Honor. I understand the court's ruling. If I'm to keep --

MR. MASTRONARDI: Your Honor, I want to object to any attempt by Mr. Satti to coach this witness at all.

MR. SATTI: Well he should object when I do it.

MR. MASTRONARDI: Well, Your Honor, I want --

MR. SATTI: My concern is this. That I'm going to be objecting. If we can limit it to keep it as particularized as possible

based on knowledge. I don't want a lot of guessing to help find an informant.

THE COURT: Just --

MR. MASTRONARDI: Coaching the witness, Your Honor.

THE COURT: Mr. Mastronardi, he's asking you to make sure that your questions are particular and not general. All right?

MR. MASTRONARDI: He could have done that while the witness was out of the room, Your Honor.

THE COURT: All right. Mr. Mastronardi, ask your question. Ask your question, please.

MR. MASTRONARDI: I object to it.

THE COURT: It's noted. Ask your question.

Q Inspector Gallick, would you tell us what the period of time that elapsed was between when you first found out or when you first obtained the information from the informant on January 6th and when you actually stepped foot into Inspector -- Dr. Bell's apartment?

A Approximately 20 hours, sir. A day.

Q So you had an entire day, did you not, to go and get a search and seizure warrant, if you wanted to, correct?

MR. SATTI: I object to that. Why don't we just say -- for the witness' purpose, why don't we tell him what we're going to be searching for. What we're going to get a search warrant for. I think that should be allowed to have the witness

give a proper answer to that. Are we talking about a search warrant --

MR. MASTRONARDI: I'll withdraw it. I'll withdraw the question.

THE COURT: The question's withdrawn.

Q. Your office is right across the hall, isn't it, sir?

A Downstairs, yes.

Q I'm sorry. On the second floor?

A Yes, sir.

Q And there are a lot of attorneys in that office, aren't there?

A Yes, sir.

Q State's attorneys and assistant state's attorneys?

A Yes, sir.

Q Mr. Satti's there too, isn't he?

A Yes. At the time he wasn't, but he is now.

Q Did you consult with any of the attorneys there at the office as to the legality of what you -- of listening through the wall?

MR. SATTI: I'm going to claim that, Your Honor.

THE COURT: Sustained.

MR. SATTI: That's a work problem.

MR. MASTRONARDI: I'm sorry, Your Honor. Did you sustain that objection?

THE COURT: Sustained it, yes.

MR. MASTRONARDI: Exception on the state of mind, Your Honor.

THE COURT: Noted. Noted.

Q Could you tell us what time you contacted Dr. Bell on that day? We're on January 6th now?

MR. SATTI: You're talking about January 6th?

MR. MASTRONARDI: I directed his attention to January 6th, yes. We're on January 6th now.

A I am not -- I would say late afternoon, sir.

Q And when you contacted Dr. Bell, did you ask him if he could -- if you could use his apartment for that evening?

A Yes, sir, I asked him for the apartment.

Q And what did Dr. Bell say?

MR. SATTI: I'm going to object, Your Honor. It's hearsay.

THE COURT: Overruled.

Q It's been overruled. You can answer it.

A He gave me permission, sir.

Q Did Dr. Bell every say he was going out that evening?

MR SATTI: Objection, Your Honor. He can ask --

MR. MASTRONARDI: It's in the affidavit, Your Honor.

MR. SATTI: If it's in the affidavit, then the affidavit can speak for itself.

THE COURT: Well I'm letting him question. Overruled.

Q You can answer.

A I do not recall, sir.

Q Would there by any notes or reports as to that that might be able to refresh your recollection on that?

A It's in the affidavit, sir.

Q Well I'd like to direct your attention to page 12, paragraph "j-1." The very bottom of the page?

A Yes, sir.

Q I'd like you to read that and tell me if that doesn't refresh your recollection as to whether or not Dr. Bell told you he was going to be home that evening.

A Yes, sir. As it states, he said he was not going to be home that evening.

Q About what time did you arrive at Dr. Bell's apartment?

A Approximately 6:00 o'clock, sir.

Q Was Dr. Bell there when you got there?

A Yes, sir, he let me in.

Q Which door did you come in?

A I entered through the back doors, sliding doors. Large 6 x 8 sliding doors.

Q Any reason why you came in through the back door?

MR. SATTI: I'm going to object, Your Honor. It has nothing to do with this case.

MR. MASTRONARDI: I'll make an offer of proof, Your Honor, but not with the witness here.

THE COURT: Overruled. Answer the question.

A No particular reason, sir.

Q Well is it -- is it less likely that one would be detected by coming in through the back door than by coming through the front door of Dr. Bell's apartment?

MR. SATTI: I'm going to object. I don't see the relevance at this point,.

THE COURT: Overruled.

A I could not say you could be detected either way. I believe why the back door was used by Dr. Bell all the time, that's why I believe he suggested the back door, sir.

Q Dr. Bell suggested this to you over the telephone --

A I believe he did say, yes, sir.

Q About how many hours did your-- did you stay at Dr. Bell's -- at Dr. Bell's apartment?

A Approximately three hours, sir.

Q From around 6:00 o'clock until 9:00 o'clock?

A That would be fair to say, sir, yes.

Q During that entire period of time, did Dr. Bell ever leave?

A He left the kitchen area where I was, yes, sir.

Q But he didn't go out that night, did he?

A Sir, I don't know what Dr. Bell did. I stayed in the back and he did leave the kitchen area where I was. What he did, I don't know, sir. If he was upstairs, or where he was, sir, I don't know.

Q Did you bring any surveillance equipment when you went, sir?

A I brought a pen and paper, sir.

Q Did you have a handy-talkie with you?

A I had a walkie-talkie connection with the cars outside, yes, sir.

Q Did you have a head phone?

A No, sir, I didn't.

Q Did you have an earphone in your ear?

A No, sir. We use earphones for tape recorders we have, yes, sir.

Q Are you saying that your office does not have a handy-talkie system with an earphone that would allow you to listen without the handy-talkie? Without the squelch sound of the handy-talkie? Would

you tell the court and my colleague what a handy-talkie or a walkie-talkie --

MR. SATTI: I'd like to get a little clarity. Mr. Mastronardi obviously know what we're talking about. I don't know what a handy-talkie is. I don't even know how to spell it. Maybe we could find out what it is for clarification.

THE COURT: Well ask him if he knows what it is.

Q Would you tell the court and my colleague what a handy-talkie is used for? Or a walkie-talkie is used for?

A Well it's a walkie-talkie, sir.

MR. SATTI: A walkie-talkie.

A Our office doesn't even own one, sir. It was borrowed, this one was. So there was no head phones with it. Our office --

Q Did this -- did this happen to be borrowed from DEA?

A Yes, sir, it was.

Q Now when you borrowed this from-- did you request this from DEA? This walkie-talkie?

MR. SATTI: I'm going to object. I don't see any relevance at this point.

THE COURT: He had it from DEA. Why don't we go from there? Let me clarify this for myself because I'm a little confused. When you --

MR. MASTRONARDI: I'll make an offer of proof --

THE COURT: Just a moment. When you talk about a walkie-talkie that you borrowed from DEA, it is the thing you had in the army where you go and someone is sitting outside or down the street and you got a little thing that calls to them. Is that it?

A Yes, it has four bands on it. And it's a communication from the person inside the building or in lot or to a car.

THE COURT: And it's not an instrument that you listen through the walls or anything?

A Oh, no, sir. It's a radio.

THE COURT: It's a radio.

A It's a radio. It's a communication through radio. That's what it is, sir. It had nothing to do with listening.

THE COURT: It's so you could communicate with someone sitting in a car down the street?

A That was the idea, yes, sir. We had cars outside the area. Yes, Your Honor.

THE COURT: All right.

Q Now did you take any precaution to -- when you -- that evening when you went to the apartment, you knew that it was possible to -- to hear through the walls, correct?

A Not personal knowledge, no, sir.

Q You had information from Dr. Bell that it was --

A Yes.

Q -- possible to hear through the wall, is that correct?

A Dr. Bell had stated he had heard a lot of sounds and noise coming from the apartment next door.

Q Did you take any precaution with respect to that walkie-talkie so that the squelch sound that the walkie-talkie makes could not be heard through the wall?

A Normal procedures, sir. The squelch is always off.

Q Let's assume for a second, that you were contacted by a squad car outside?

A Yes, sir, which I was.

Q Would that -- would that voice be able to be heard over the walkie-talkie?

A Yes, sir.

Q Did you take any precautions to make sure that that voice could not be heard through the wall?

A I had no precautions. I had the thing on the table in front of me, sir.

Q Did you ever ask DEA for a headphone?

A No, sir, I never did.

Q For a connector for the walkie-talkie so that the voices couldn't be heard?

A Sir, I've been a police officer for 30 years. I have never seen it used --

Q A simple yes or no will do.

A -- no, sir. I have never seen them and I don't even think they have them, sir.

Q Now when you got there at 6:00 o'clock, did Dr. Bell lay down any ground rules for this surveillance? In other words, did he tell you where you could go, what you could do while you were in his apartment?

A No, sir, he didn't lay down rules. No, sir.

Q If you wanted to, you could freely walk into the kitchen, correct?

A I was in the kitchen. I could, yes, sir.

Q And if you wanted to, you could freely walk out into the living room, right?

A Yes, sir. It's a railroad flat. It's straight. Yes, sir.

Q Does it have an upstairs?

A There was stairways up there, yes, sir.

Q If you wanted to, could you have gone upstairs?

A I believe I could have if I asked. I didn't ask to go upstairs, sir.

Q You didn't?

A No, sir.

Q But if you wanted to, Dr. Bell would have let you go upstairs too, right?

A I believe he --

MR. SATTI: I'm going to object. How do we know this? This is --

THE COURT: That's conjecture. Sustained. Move on.

Q Did Dr. Bell ever restrict your movement while you were in that apartment at all?

A No, sir.

Q Now I'd like to direct your attention to the affidavit again, if I may. Let's start with paragraph -- on page 13 at the top, paragraph two. I'm sorry, paragraph three. Now paragraph three indicates that at 6:10 p.m., you heard Inspector -- you heard Mr. Benton informing someone on the telephone that he was expecting a package and that the person who he was speaking to would have to pay him

for the other package before Benton would give the person this other package this evening. Is that correct?

A Yes. Yes, sir.

Q You say this happened at 6:10 P.M.?

A Approximately, sir, yes.

Q Now you say that when you went to this apartment, you had a notebook and a pencil?

A Yes, I --

Q And a walkie-talkie with you. Did you put pencil to paper at that time?

A No, sir, I did not.

Q Are you telling this court that not one report exists -- not one note exists as to that conversation?

A I don't -- no, sir. I do not have no notes for that conversation.

Q How long after the fact did you report this to Inspector Solomon?

A The next day.

Q The next day you remembered that at 6:10, you heard voices through the wall? You heard this conversation --

A That's correct, sir.

Q -- without one note? Is this what you're telling this court?

A I'm telling the court that at approximately 6:10, yes, sir. I have no notes, no reports on it. Unless there's one in the file, sir. I don't recall any notes that I made on that night.

Q Well did you consider this statement to be pretty important?

A Yes, sir, it sir.

Q But yet not important enough to put pencil to paper?

A When you say, "pencil to paper"--

MR. SATTI: I'm going to object at this point. If the claim is that the statement didn't ever exist, I don't think that he has any grounds to go into it. I don't think he can attack whether or not it's got a date or granted that the statement existed. He can't say if it's in existence, I want a motion to suppress.

THE COURT: All he's asking, I think, is there any notes concerning recording of this statement?

A Your Honor, I would probably say that if you're talking about a notebook that I carry, I might mention, "6:10, phone call." But where that note is, I don't think I have today, sir. I believe I

probably wrote something at that time, which I would have. But what I did with that note, like I said, it's -- they're not -- I don't know whether they're available right now. I don't have those notes, sir. I remember very distinctly having a paper. I did make notes, but at that particular time, I'm saying at 6:10. But I did make some notes that night, yes, I did.

MR. MASTRONARDI: Your Honor, I respectfully request production of these notes.

MR. SATTI: Well I don't think there's any grounds for it. This is his witness.

MR. MASTRONARDI: Again, this -- I have called this witness, but this is not my witness. This is the state's witness.

THE COURT: Ask the question, does he have the notes today? Do you have the notes, sir?

A No, sir. There's a report on it, but I do not have the notes.

THE COURT: Do you have any notes in existence?

A No, sir, but there is a report on that night, but no notes, sir.

THE COURT: Do you have that report on that night?

A Yes, there is a report in the file. Yes, sir.

MR. MASTRONARDI: Your Honor, I request production of that report, Your Honor. I request it in my discovery back in May.

MR. SATTI: Well wait a minute. Let's find out -- I'm going to object to have Mr. Mastronardi give the court a ground. He has a right to have a work product of the state at this point.

MR. MASTRONARDI: How about Brady, Your Honor?

MR. SATTI: Again, it's a fishing expedition. The statute says after a witness has testified on direct examination by the state, then he gets a chance to look at it and it's only at a trial. That's what the statue and the Practice Nook says. Only at trial. It's his witness. He called the witness. That doesn't give him the right to get a statement or reports at

all. This is a pre-trial motion at this point.

MR. MASTRONARDI: Your Honor, I am entitled to review all exculpatory material and I believe under UNITED STATES VS. DENNIS, I am not only entitled to review it, I am entitled to make the determination myself as to whether that material is exculpatory.

THE COURT: Wait a minute. Whoa. You mean you have a right to go through the whole state's attorney;s file and decide what's exculpatory or not exculpatory? You know better than that.

MR. MASTRONARDI: Well I think that the prosecutor --

THE COURT: I will look at the statement in camera. Let see that statement.

MR. SATTI: I don't have it.

THE COURT: All right. Well get it a 2:00 o'clock and I'll look at it.

MR. SATTI: If you want it, I can get it, but I don't have it here.

THE COURT: I'll look at it. Continue.

MR. MASTRONARDI: Your Honor, I need it now in order to meaningfully examine this witness.

MR. SATTI: Your Honor, I don't think-- there's no reason to --

MR. MASTRONARDI: If I can do it now, I can come back to it later. I'll continue other --

MR. SATTI: I have on objection to doing it now.

MR. MASTORNARDI: It will save everybody time.

THE COURT: Continue.

Q Now directing your attention to paragraph four, your affidavit -- the affidavit of Inspector Solomon indicates that at 7:30 p.m., you overheard the phone ring and that you heard Mr. Benton answer the phone and speak with someone. Incidentally, prior to January 6th, had your ever spoken with Mr. Benton?

A Prior to -- years ago.

Q Years ago, you spoke with Mr. Benton?

A I had dealings with Mr. Benton years ago, yes.

Q About how long ago?

A '78 I did some work for him.

Q That would be six years -- six years before the fact, is that correct?

A Yes, sir.

MR. SATTI: Maybe five.

Q Five years before the fact?

A Yes, sir.

Q All right. Returning to paragraph four, I'll repeat that. At approximately 7:30 p.m., you, Inspector Gallick overheard the phone ring. You heard Benton answer the phone, speak with someone. During the conversation, you heard Benton state that he was looking to obtain a package and informed the person that he had five right now in his pocket and that the person would have to trust him for the other five until Sunday?

A Yes, sir.

Q Are you -- have you reviewed that?

A I've read that, yes, sir. I know the paragraph, sir.

Q Where were you located when you heard that statement?

A In the kitchen, sir.

Q You weren't out in front, looking out the window doing any visual surveillance?

A No, sir. I was in the back in the kitchen, looking out the back visually.

Q Secreted in the back, in the kitchen?

A No, sir, I was --

THE COURT: I don't think you heard his answer, counselor. He said he was in the back looking --

A I was in the kitchen.

THE COURT: out the back window visually. Is that what you said?

A Yes, sir, I was. Yes.

Q What about the first overhear at 6:10. Where were you situated at that time?

A I was by the back window, sir, in the kitchen.

Q When you heard this, did you consider this to be pretty important?

A Yes, sir.

Q Did you -- did you write it down in your notes?

A There's a full report on that. Yes, sir, in writing.

Q But no notes to support this. Just a --

A No.

Q But no notes to support this. Just a --

A No.

Q -- report?

A The notes, I don not have, sir, at this time. My full report -- official report is made as part of the file, yes, sir.

Q Directing your attention to paragraph five. It reads, "Inspector Gallick reported to affiant that immediately following the 7:30 p.m. phone call, he observed Leonard Benton and a white female leave the apartment and enter into a red station wagon." Now was this

observation made out the front window or out the back?

A The living room window, sir.

Q How did you know to go to the living room when you were in the kitchen?

A I went to the front of the house, sir, when it was quiet. I would watch the front and then go back to the back.

Q Are you saying that it was just a coincidence that you happened to be at the front window when Mr. Benton and Miss Cassidy walked out the front door?

A No, sir. I was in the living room at the time. It wasn't a coincidence. That's where I was, sir.

Q That's where you were?

A Yes, sir.

Q Did your hear through the wall? Did you hear anyone say, "well, let's get going. It's time to leave."

A I believe I heard footsteps. Vibrations in the house, yes, sir, I did. Going to the front, yes, sir.

Q So it was footsteps that led you to believe that someone was leaving. Not anything you heard through the wall?

A Sir, I heard the conversation through the wall. I did, as reported, and I went to the front of the house when I heard footsteps going. Yes, sir.

Q When you heard these footsteps going out the front door, did you take your walkie-talkie and report to anyone?

A When I went out the front door of the house and looked out the window, I saw two parties enter the vehicle. I radioed

to a car that was sitting on the east end of West Avenue, that there was movement and gave them a description of the vehicle.

Q I would now like to direct your attention to paragraph nine. Well backup. Paragraph eight. It's on page 14.

A Yes, sir.

Q Paragraph eight reads that, "Inspector Gallick who was still within the adjoining apartment to the Benton residence, observed the female and Benton arrived at said location at approximately 8:20 p.m." In other words, they were returning. Is that right, sir?

A Yes, sir.

Q "And further observed Leonard R. Benton, a/k/a Leonard Cappozello, making observations of the area." Could you

explain what you mean by that or what was meant by that, sir?

A The vehicle was parked in front of the house at that time. And the -- Mr. Benton was in the passenger side of the vehicle and the door was open. He looked both directions. That's what I meant. East and west, sir. The area is well lit. There's a very bright street light in front of the house, sir.

Q Now I'm a little confused here because right after that it says that-- first it says that Mr. Benton was making observations of the area by looking in both in an easterly and westerly direction and then it says that he then immediately exited the red station wagon and ran from the vehicle?

A That's correct, sir.

Q Are your saying that while he was in the vehicle, he was looking easterly and westerly?

A The car door opened and the head movement in both directions, sir. And he exited the vehicle.

Q Would you say that Mr. Benton was being careful?

A It appeared to me, yes, sir.

Q Being very careful, right?

A Yes, sir.

Q Now it says here that he immediately exited the red station wagon and ran from the vehicle, carrying a large plastic type bag which he held with two hands?

A That's correct, sir.

Q In your experience, Inspector, is cocaine heavy enough to be carried with two hands?

A When you're careful you carry it with two hands, yes, sir.

Q Again, Mr. Benton was a careful man, correct?

A I can't assume that.

Q Well you found what he did to be-- to indicate that he was careful?

A I believe he was cautious, sir. I would say that word.

Q Cautious. Good word. Now paragraph nine says that Inspector James Gallick then reported to the affiant that he was able to overhear the voice of Benton coming through the adjoining apartment speaking with a female and was able to overhear Benton using the term "coke"

within his conversation and with the female and using the term, "rock." Is that correct?

A Yes, sir. There's a report on that. Yes, sir.

Q That's in the report?

A Yes, sir, it is. All that's in the report.

Q Tell us where you were standing at that point or where you were situated in Dr. Bell's apartment at that time.

A After they entered the apartment next door, I went to the kitchen once again, sir.

Q Is there any particular reason why you went to the kitchen?

A The movement of next door, you could feel the vibration of feet running or

walking and I went where the area where they were, sir.

Q You went where the activity was?

A Well I went on my -- in the apartment I was in, I went to the kitchen, yes, sir. From the front to be back. Yes, sir.

Q Would it be fair and accurate to say that your went from the front of the apartment to the back of the apartment to hear what was going to happen next?

A I went from the front to the back because of the movement in case they went to the back door or something, sir. I was there to surveil and I moved when they moved. Yes, sir, I did.

Q Directing your attention to paragraph 11, it reads, "at approximately 8:45, Inspector Gallick observed the white

male exit from a vehicle parked across from 200 Westfield Avenue and enter into Benton's apartment." At this point, you were back in the living room. Is that correct?

A Yes, sir.

Q Any reason why you left the kitchen to go back into the living room?

A Sir, I was moving back and forth between those two rooms constantly, sir, because there was two points that we had knowledge of. The vehicles used the back driveway for parking and the front of the house they parked, sir, on the street.

Q I only --

A No, I mean that's -- that's what the movement was, sir. That's why it was back and forth.

Q Did it have -- it didn't have -- did it have anything to do with something that you heard in Mr. Benton's apartment?

A No, sir.

Q It was just standard operating procedures? You would go back to the front to look every now and then?

A Yes, sir.

Q The paragraph goes on and says that you, Inspector Gallick, was able -- were able to overhear a conversation coming from Benton's apartment between Benton and another male voice. "Gallick was able to overhear Benton remark, 'it's good stuff,' and overheard the other male voice remark 'yeah, it looks good.'"

A Yes, sir, I heard that. Yes.

Q Did you -- did you make any notes of that

A It's in the report, sir.

Q Did you make any notes of that?

A I -- I made notes that particular night, yes, sir. I must have for the report for later --

Q Now do you have specific recollection that when you heard Benton say, "it's good stuff," and you heard the response, "yeah, it looks good," did you write those words down?

A I'm -- I don't believe I wrote all those words down, no, sir. I can't say verbatim. I can't say that, sir.

Q With respect to any of the overhear, do you have any specific recollection as to writing any of them down word for word, verbatim?

A Time and pertinent words, yes, sir, I did write down.

Q Which ones, could you tell us?

A Well I'd have to see the report, sir, what I wrote down.

Q Okay. Here. When you heard this, "it's good stuff," "it looks good," did you -- when you heard these two remarks, where were you situated at that time?

A In the kitchen sir.

Q You were back in the kitchen?

A Yes, sir.

Q What made you go back to the kitchen?

A The sounds were coming from the kitchen area, sir, the back of the house. The movement I was picking up, you know, in the apartment that I was next door, on the surveillance, I heard movement in the back of the house and that's why I went, sir.

Q So would it be fair and accurate to say then, that when you saw this person drive up in a car, you heard him come in, you heard the movement go to the back, you followed the movement? Is that correct?

A I went to the back, sir, yes.

Q Hypothetically, suppose the movement had gone upstairs, would you have gone upstairs?

MR. SATTI: Objection, Your Honor. Speculation at this point.

MR. MASTRONARDI: It's a perfectly legitimate question, Your Honor. It goes to this witness' state of mind while the surveillance was going on.

THE COURT: He's already answered the question. He had free access to the house.

He could have gone upstairs or downstairs. Didn't you answer that question?

A Yes, sir. He had no restrictions, sir, for me.

THE COURT: So you could have gone upstairs --

A Yes, sir.

THE COURT: -- if you wanted to. Downstairs.

A Yes, sir I would have.

THE COURT: He's answered the question.

MR. MASTRONARDI: I'd like to know if he would have, had they had gone upstairs.

THE COURT: That's just speculation. They didn't go upstairs.

MR. MASTRONARDI: They didn't. That's right. But, Your Honor, I think it's perfectly legitimate question. It goes to his state of mind.

THE COURT: All right. Answer the question.

A I don't know what I would have done. It depended on the sounds and what activity I heard to go upstairs. I wouldn't have just gone up if I heard movement upstairs. I would have had --

THE COURT: Reason.

A -- reason. Well, yes, sir. I would have to have some type of grounds to go up there. It's a man's house.

Q If you had some grounds, you would have gone upstairs?

A Yeah. I would have restricted myself, sir, because it's a man's home and I wasn't there to just move around. I was there to surveil and that's what I was doing, sir.

Q Now let's talk about Dr. Bell's residence for a minute. Would it be fair and accurate to characterize Dr. Bell's residence as a private residence?

A It's a private residence, yes, sir.

Q Was it something -- an area that was open to the public in general, was it?

A It's a man's home.

Q Now you say that you were there from 6:00 p.m. to 9:00 p.m. Correct?

A Approximately, yes, sir.

Q During that entire period, from 6:00 p.m. to 9:00 p.m., did you ever situate yourself in an area that you would characterize -- you yourself would characterize as public space?

A No, sir.

Q I'm sorry. I didn't --

A No, sir. I wouldn't characterize-- I was inside a house. I wouldn't call that a public space.

Q You were inside a house in an area of private space. Is that correct?

A Dr. Bell's residence, yes.

Q Are you aware that Inspector Solomon testified here yesterday?

A Yes, sir, I believe he did. Yes.

Q Have you spoken to Inspector Solomon about his testimony?

A No, sir, I did not.

Q If I were to suggest to you, Inspector, that yesterday while Inspector Solomon was on the stand, he testified that Leonard Benton had a sophisticated drug operation being run from his apartment, would you state that that was an accurate statement?

MR. SATTI: I'm going to object. I don't see the relevance at this point.

THE COURT: Sustained.

MR. MASTRONARDI: I'd like to make an offer of proof on that, Your Honor.

THE COURT: On what? That's not relevant. We're here to take about whether he was in on an illegal search and seizure. It's not relevant. You've got an exception. It's noted. Move on.

MR. MASTRONARDI: I would also like to except to Your Honor not allowing me to make an offer of proof.

THE COURT: Step out. What's your offer of proof?

MR. MASTRONARDI: Your Honor, the most important issue in this case is Mr. Benton's subjective expectation of privacy. What he -- what his expectation or privacy was while he stood there within his own residence. Yesterday, Inspector Solomon was on the stand, testified that Mr. Benton was running a sophisticated drug operation. He testified that he was very, very careful, very, very cautious. He testified that Mr. Benton was careful never to volunteer anything to the public at large. Those were his exact response to Mr.

Kelly's question. I just want to make it clear through this witness.

MR. SATTI: Can I be heard at some point, Your Honor? When Mr. Mastronardi is done.

THE COURT: Are you finished?

MR. MASTRONARDI: Yes.

MR. SATTI: Your Honor, I think that we're again, jumping between the apples and oranges. Solomon's testimony dealt --

THE COURT: Well he's made his offer of proof. I'm going to save you some time. It's sustained. It's stated. You have your exception. It's noted. Brink him back.

Q I'll try a different approach, Your Honor. Would it be fair and accurate to say, Inspector, that you've been involved

in drug investigations for a while now? Other drug investigations?

A Yes, sir.

Q So you have some experience in this area, correct?

A Yes, sir.

Q In your opinion, did you find -- do you find or did you find while you were conducting this particular investigation, that Mr. Benton, in your opinion, was Mr. Benton running a sophisticated drug operation?

MR. SATTI: I'm going to object. I'm going to object. I don't understand the relevancy. It's the same thing we talked about before that was sustained the objection. He's now going into something beyond January 6th.

THE COURT: Sustained.

MR. MASTRONARDI: Exception for the same reason, Your Honor. My offer of proof would be the same.

THE COURT: Noted. Noted.

Q In the course of your investigation of Mr. Benton, did you find Mr. Benton to be an individual who was careful who in running his business, his illegal narcotics business, was careful to avoid detection?

A I'd answer yes to that, sir.

Q You couldn't see Benton doing anything to expose this operation to the public in general, could you?

A No, sir.

Q At any time prior to January 6th, 1984, did you have any discussions with any officials -- any law enforcement officials

about the possibility of tapping Mr. Benton's telephone?

A Prior to January 6th, 1984?

Q On or before January 6th, 1984, yes?

A Yes, that was discussed with my senior, Inspector Solomon, yes, sir.

Q In fact, it was considered an objective of this investigation, wasn't it?

A He was one of the principals, yes, sir.

Q No, I'm talking about gathering--specifically gathering evidence--specifically gathering evidence sufficient to construe probable cause to tap Leonard Benton's phone, was an object of this investigation. Is that correct?

MR. SATTI: I'm going to object. I don't see the relevancy at this point.

THE COURT: Overruled. You can answer the question.

MR. SATTI: If he knows.

THE COURT: Certainly if he knows. If he doesn't know, he says he doesn't know.

A Would you repeat the question, sir, please?

WHEREUPON THE QUESTION WAS PLAYED BACK

A Any investigation that we're working on, we try to find the full scope of the investigation, sir. And wiretap is one of the availabilities to us. The last resort, but it is available. So if you're asking, do we have that in the back of our mind, not at first, sir, no.

Q But would it be fair and accurate to say that sometime between when the investigation started and January 6th, the day that you went into Dr. Bell's apartment, that had been discussed and the possibility of a wiretap on Mr. Benton had been discussed?

A Yes, as one of the alternatives we have through our investigation. Yes, sir.

Q Inspector, do you understand that when you come into this court to testify-- to testify on the stand, you bring with you, your common sense and your day to day experience. Do you understand that?

MR. SATTI: I object. I don't understand. I don't know of any rule that's required.

MR. MASTRONARDI: I'll rephrase it, Your Honor. It's no problem.

Q Do you consider yourself a man who possesses common sense?

A Yes, sir, I do.

Q Inspector, do you know where Mr. Benton's telephone was located on the main floor?

A It sounded like it was in the kitchen area, sir, in the back of the house.

Q In the back of the house?

A Yes, sir.

Q From the sidewalk out in front of Mr. Benton's house, would you have been able to hear Mr. Benton taking on the telephone?

A I couldn't say that, sir.

Q I'm asking you to apply only common sense and give an honest - an honest answer. From the sidewalk in front of Mr. Benton's house, would it have been possible for your to hear Mr. Benton at a telephone? Talking over a telephone in the kitchen in the back of his house? Assuming all the doors were closed and the windows?

A Again, I would be surmising. I would say I would find it difficult if I was standing on the sidewalk --

Q Near -- would it be safe to say it would be near impossible?

A Not impossible I can't say, but I would say that I would find it difficult. Yes, sir.

MR. MASTRONARDI: Nothing further.

THE COURT: Mr. Kelly.

MR. KELLY: It's still my position that I don't think I have standing as far as cross -- or the direct examination on Inspector Gallick. I think my argument is confined to the four corners in the affidavit. I do have

* * *

JAMES GALLICK, having been previously sworn, returned to the witness stand and continued to testify as follows:

CROSS EXAMINATION BY MR. SATTI

Q Detective, turning to January 6th, 1984, you got there you said, between the hours of approximately 6:00 to 9:00 p.m.?

A Yes, sir.

Q I understand the purpose of that was to conduct a surveillance of the area on 200 and 198 Westfield Avenue in the City of Bridgeport?

A Yes, sir.

Q And the purpose of it was a visual surveillance of parties coming and going to both the front and the back doors?

A Yes, sir.

Q And when you got there, you said you came in through the back door?

A Yes, sir.

Q I take it behind that was a driveway?

A Behind that, the backyard to the driveway off to the left.

Q All right. Public areas though basically. It wasn't enclosed by a wall or a fence or anything like that?

A There was a fence back there, sir.

Q And where did the fence start?

A At the back porch. It ran away from the house out to the back.

Q Did it kind of split the properties?

A Yes, sir, it did.

Q All right. And was it a chain link fence?

A It's a wood fence, sir.

Q How tall would you say it was?

A Five feet.

Q Okay. And you got to the address and you were let in by Dr. Bell and you said you had no electronic surveillance material with you?

A No, sir.

Q And I take it that during the course of your listening, you never put your ear against the wall?

A No, sir.

Q Did you ever use a glass or any other type of item to press against the wall to listen?

A No, sir.

Q Is it fair to say that the conversations of Mr. Benton were kind of loud?

A You could hear Mr. Benton's voice, yes.

Q At some points, probably louder than others?

A Yes, sir.

Q You might have been nearer to the wall than others?

A Yes, sir.

Q And you said that you heard the voice of Mr. Benton in the area that you said was the kitchen in Dr. Bell's house?

A Yes, sir.

Q You're not quite sure what it was in Mr. Benton's?

A No, sir, I'm not.

Q You heard the phone ringing also?

A Yes, sir.

Q Besides Mr. Benton's voice, who you recognized, you heard other voices?

A Yes, sir.

Q You heard a female voice at some point?

A It was a female voice, yes, sir.

Q Did you hear other male voices?

A Later on in the evening, yes, sir, I did.

Q Voices you didn't recognize?

A No, sir.

Q When you were conducting your visual surveillance of the area in the front portion of the house, say closest to Westfield Avenue, did you see people coming up to the door?

A I saw a couple of people, yes, sir.

Q And did you hear the door opened up on the inside of the Benton residence?

A Yes, I did.

Q Did you hear conversations at that point?

A I heard voices, sir. I couldn't distinguish them.

Q But you -- you didn't know what they were saying --

A No, sir.

Q -- but you heard voices?

A I didn't know what they were saying.

Q The same type of thing that if you were standing out on the street you could have heard people talking at that point?

A Yes, sir.

MR. MASTRONARDI: Objection, Your Honor. Unless Mr. Satti is prepared to

qualify this witness as a sound logistics expert, I don't thing the witness is competent to testify. To answer that question.

MR. SATTI: Mr. Mastronardi asked a series of questions of where he was standing when he could hear from the front and the back. I'm just qualifying that.

THE COURT: Sustained.

MR. MASTRONARDI: Exception.

THE COURT: I sustained your objection.

MR. MASTRONARDI: Oh, I'm sorry. I thought you overruled it.

THE COURT: Do you want me to overrule it?

MR. MASTRONARDI: I'm so used to being overruled.

Q When you were in the backyard approaching the Benton residence --

A Yes, sir.

Q -- did you hear voices coming from inside the house?

A Not when I approached it. No, sir, I did not.

Q How about when you left?

A No, sir, I did not.

Q And you said that you were inside the house. In the front area you heard people taking in the outside. Would have been the front steps of the Benton residence?

A Yes, I heard voices in the front. Yes.

Q Did you see the people there when they were talking?

A No, sir, I did not.

Q You could see them go up to the door --

A And I lost sight of them, yes, sir.

Q Did you hear a knock on the door or a ringing of the bell or anything like that?

A Ringing - door bell, sir.

Q Door bell. The door bell would be the normal thing that would be on a house? I take it.

A Yes, sir.

Q The visual observations that you made, do you recall approximately how many people you saw coming and going.

A Three or four, sir.

Q All right. And was this before or after Mr. Benton left?

A This was after he arrived back. After 8:30, sir.

Q After you saw him looking both ways in a cautious manner, running into the house?

A Yes, sir.

Q All right. And that based on your training and experience made you a little suspicious?

A Yes, sir.

Q And based on the knowledge that you had, you thought that he possibly had something to do with a drug transaction?

MR. MASTRONARDI: I'm going to object, Your Honor. This is not only leading, but it's testifying for the witness.

THE COURT: Excuse me.

MR. SATTI: It's cross examination.

THE COURT: It was your witness, was it not?

MR. MASTRONARDI: Well it's a state-- as I said before, Your Honor --

THE COURT: He's entitled to cross examination. A hostile witness you put on. You used cross examination. He can -- he's cross examining.

MR. MASTRONARDI: I thing he's going-- it's going beyond cross examination. --

THE COURT: Overruled.

Q Based on your training and experience, could you answer that question?

MR. KELLY: I'm sorry. May that question be read back. I got lost.

MR. SATTI: I'll repeat.

MR. KELLY: Or if you repeat it. Thank you.

THE COURT: Rephrase the question.

Q When you indicated that you were conducting the visual surveillance of the Benton residence, a car pulled up. You saw Mr. Benton looking in a cautious manner, running into the house. Based on your experience, did you think that a drug transaction may have taken place?

MR. MASTRONARDI: Objection, Your Honor. There's no -- there's absolutely no foundation for the witness to make that conclusion.

THE COURT: I'll sustain it because it's a think. Does he know.

MR. SATTI: I'm sorry, Your Honor. I asked him if he had an opinion.

THE COURT: Well I mean, that's a crime. Does he think a drug transaction

took place. You have to ask whether he knows or he doesn't know.

MR. SATTI: I was forming it in the frame of a hypothetical opinion based on his training and experience. May I have an exception, if Your Honor please.

THE COURT: Noted.

Q You indicated that you testified in response to Mr. Mastronardi's questions that you thought there was approximately 20 hours between when you received some information prior to going to the address at 198 Westfield Avenue. Do you remember that testimony?

A Yes, I remember that testimony.

Q On further recollection, it is closer to being maybe an hour or two?

A Yes. After reading the reports, yes, sir.

Q And the purpose of going to that place, 198 Westfield Avenue was to conduct your surveillance regarding information you received about an hour or two earlier?

A Yes, sir, it was.

Q And I take it that was probably in the late afternoon on January the 6th?

A Yes, sir. According to my reports, yes, sir.

Q Up to that point, did you have--would it be fair to say you didn't have probable cause to get a warrant for the arrest of Mr. Benton at that point?

A No, sir.

Q Couldn't at that point get a probable cause for a search warrant for Mr. Benton?

A I don't believe so, sir.

Q And during the period of time that you were in the portion of the house that you identified as the kitchen area, is it fair to say that you were probably no closer than two or three feet away from the wall?

A I'd say close to a foot, foot and a half, sir.

Q All right. And did you ever put your ear up to the wall?

A No, sir, I didn't touch the wall.

Q And when you were there listening, were you seated or were you standing?

A I was seated some of the time, sir, and I was standing others.

Q Okay. Would it be fair to say most of the times at least when you first started hearing the noise, that you were

conducting visual surveillance at the back and the front area?

A Yes, sir.

Q And it was only after you started to hear some conversations inside, that you more or less turned your ear?

A Well yes, sir. When they -- I heard the voices and I listened. Yes, sir.

Q And when you listened, you heard voices, one of which you identified as being Mr. Benton?

A Yes, sir.

Q And you said you'd known Mr. Benton at least five years before or so when you'd done some work for him?

A Yes, I know Mr. Benton, yes.

Q So would it also be fair to say that you've heard his voice since then also?

A I would say probably around 1980, I talked to him again too, I believe, sir.

Q And so you had at least some knowledge of what his voice was and it appeared to you, I mean you couldn't have been 100 percent perfect, but you thought that was Mr. Benton?

A Yes, sir.

Q And you indicated that you also said that as people moved in the apartment, not only did you hear noise there, but you actually noted a physical change in Dr. Bell's apartment. You said the apartment was moving?

A There is a vibration, yes, sir.

Q Was it a very strong vibration?

A It was -- it was quite obvious, yes, sir.

Q Okay. And you said at that point, that you would move to different portions of the house when you thought that people were -- at least by the vibration, were moving towards the front, you'd move towards the front?

A Yes, sir.

Q And you said at one point, you heard people moving towards the front so you went out there and you made an observation. You saw Mr. Benton and another party leave?

A That's correct, sir.

Q When you were in that apartment, would that be called the living room or a den or --

A It was the living room, sir.

Q Okay. When you were in the living room, did you hear voices there?

A On -- later on in the evening, near the front door, once, sir, I did. Yes.

Q Near the front door?

A Yes, sir.

Q Did that -- did that front living room, does the adjoining wall to Mr. Benton have any closets? Was there a stairway there?

A There was a door, but there's about a 12 foot wall, eight wall. A blank wall.

Q Okay. And do you recall any furniture?

A There was no furniture that I recall in Mr. Bell's house, no.

Q The kitchen area had a table that you were seated at?

A Yes, against an inner wall. Yes, sir.

Q And would that table shake as people were moving around in the other apartment?

A I didn't notice that, sir.

Q Now besides the conversations you've testified to, regarding the different portions of the affidavit, paragraph "8-j," one, two, etc., didn't you also hear other times when the phone was ringing, other people answering that you couldn't identify?

A The phone rang several times. It was answered several times by a female voice I could not identify. And when Mr. Benton was out of the house, the phone rang a couple of times and an unknown male that had arrived prior to Mr. Benton leave, who parked in the backyard, answered the phone, yes.

Q Okay. And at that the time the phone was ringing, would you say that the tone was up to a loud tone? You had no problem hearing it?

A Well I don't

--

MR. MASTRONARDI: Objection again, Your Honor. I think that if Mr. Satti is going to ask questions like that, he has to lay a foundation as to how this witness can make a judgment like that, and he hasn't.

THE COURT: Claim it?

MR. SATTI: Yes, Your Honor.

THE COURT: Overruled.

Q Was the phone loud enough, the tone high enough so you had no problem hearing it?

A The phone was -- was quite clear, yes, sir. It was the loudest thing in the apartment was the phone when it rang.

Q And the loudest thing you heard was the phone?

A Yes, sir.

Q The next loudest, what would that be? The voice of Mr. Benton or the voice of the female or you can't say?

A I would say Mr. Benton's voice was the loudest I heard other that that.

Q And you indicated that the Bentons left and somebody came in through the rear?

A Yes, sir.

Q Did you watch that person go into the house?

A Yes, sir. Parked the vehicle and he came through Mr. Benton's apartment through the back door.

Q Was that prior to or after Mr. Benton had left?

A Just prior to him leaving. Around 7:30. It was a young male.

Q Did you hear any conversations at that point, as he came in near the door?

A There was some -- I could not distinguish what the conversation was, but there was conversation.

Q And did you know who that male was at the time?

A I could not identify him, no, sir.

Q After Mr. Benton returned, you said that he ran into the house with a bag. And you testified that people sometimes carry cocaine in that type bag?

A It appeared to be that he was carrying the bag very, very carefully. It

was a plastic bag and cocaine does come in clear plastic bags.

Q You also indicated that you heard Lenny using the words, "rock" and "coke" after he had returned?

A Yes, sir, I did say that.

Q And how clear was that conversation that you heard?

A Well those words were very clear. That was in the back of the house in the kitchen area.

Q And you say you were about three feet away from the wall at that point?

A Close to a foot and a half, sir.

Q A foot and half away?

A Yes, sir.

Q Seated?

A Seated, yes, by the kitchen table.

Q Did you see -- let me withdraw that. You saw Mr. Benton come into the house and you heard the noise going again towards the rear of the house?

A Yes, I did.

Q Then you went to the kitchen?

A Yes, sir, I did.

Q And at that point were you conducting any more visual observations of the rear area to see if anybody else was going to come in or leave from the back?

A Well I was watching the back driveway all the time from the kitchen where I sat.

Q Okay. And the purpose of that was that it was your job to see -- make sure that nobody had left through the back at that point?

A Yes, sir.

Q All right. The -- going from the car to the house you said, it was a running?

A It was quick pace, yes, sir.

Q And how would you characterize it? They ran to the back of the house also?

A It was rapid. I would say it was very rapid footsteps, yes, sir.

Q Did you hear heavy footsteps, or --

A They were heavy, yes, sir.

A You know, you said you heard some vibrations in the house?

A Yes, sir, I --

Q Did they seem to be heavier than others to lead you to believe that it was running?

A They were the heaviest I heard, yes, sir.

Q And after they got back, didn't you also hear a series of phone calls?

A There were several calls, yes, sir.

Q And did you hear other discussions that you thought were drug related?

A Yes, sir.

Q What were those discussions?

A Discussion about a package and he'd be ready around 9:00 o'clock.

Q And how clear was that?

A That was clear, sir. That was clear.

Q And who was saying those things?

A Mr. Benton.

Q Besides the telephone and besides the voices in the home, did you hear a stereo, a t.v., a radio? Anything like that going?

A At one time I heard a t.v., I believe it was, sir.

Q Do you remember if that was when you were in the living room or in the kitchen?

A That was in the living room I heard that, sir.

Q How loud was that?

A That wasn't that loud.

Q Could you make out --

A No, sir.

Q -- what program might have been on?

A No, sir.

Q Just that -- just that it was a t.v.?

A It sounded like music or t.v., yes, sir.

Q Now you indicated that people started coming to the house. Would it be

fair to say that that was after Mr. Benton came back with the girl and the package?

A Yes, sir, that was later on in the evening. Yes, sir, prior to me leaving the surveillance.

Q Say a quarter of -- 10 minutes to 9:00?

A Ten minutes to 9:00, sir, I'd say.

Q Four or five people came to the door?

A Three or four I observed, sir.

MR. MASTRONARDI: Your Honor, I'm going to object that this is beyond the scope of direct. And it's also irrelevant.

MR. SATTI: I claim that it is relevant, Your Honor.

THE COURT: Isn't that your exhibit that's in?

MR. MASTRONARDI: Sorry, Your Honor.

THE COURT: It's the defendants' exhibit that's in. Defendants' exhibit, the excised report of the Inspector. Is that correct?

MR. MASTRONARDI: Yes, Your Honor. I haven't had time to look at it yet.

THE COURT: Well it's all on that.

MR. MASTRONARDI: I just received it.

THE COURT: Well it's been here. Overruled. Continue.

Q You saw three or four people come to the door?

A Yeah, two or three, sir, I observed.

MR. MASTRONARDI: Your Honor, can I have an exception to that?

THE COURT: Noted.

Q And at the times that they came to the door, did you hear any discussions when you were in the living room?

A No, I didn't. Just the greeting at the door itself, sir. I heard voices exchange --

Q "Hi, how you doing," or --

A Something like that when the come in, yes, sir. I could not distinguish any conversation then.

Q You couldn't tell who was saying what?

A No, sir, I could not.

Q But at those points, the door wa open and to the best of your knowledge-- at least you thought the door was open --

A Well I couldn't see and like I say, I was standing in the living room by the

front door of Mr. Bell's. I could not say if the door was open or not.

Q Let me step back a bit. You seen somebody come up to the steps. Was it-- say the first time, was it one or two people?

A It was two people, I believe.

Q And you hear the bell ring --

A Um-hmm.

Q -- would that -- was it a bell or was it a buzzer?

A It was bell, sir, I believe.

Q A loud bell?

A No, it was a regular door bell.

Q Did you have any problem hearing it in Mister --

A No, I heard it.

Q And the door -- you heard the door open?

A I didn't hear the door open, no, sir. I heard the bell.

Q Did you hear any locking mechanism going on?

A No, I didn't hear none of that, no, sir.

Q Did you hear anybody walking to the front after you heard the bell?

A No, I did not, no, sir.

Q You then heard some conversation?

A Yes, I heard conversation at the door. Greeting at the door, yes, sir.

Q Greetings at the door. Did you see the people then disappear and go into the house?

A No, I lost sight of them the minute they came up to the door, sir.

Q Okay --

A When they were on the porch, I would lose sight of them.

Q -- the night you were there, was it kind of a cold night?

A Very cold, sir.

Q And the air was kind or very crisp?

A Yes, sir, it was crisp.

Q A lot easier to hear in the cold air. Would that be fair to say?

MR. MASTRONARDI: Objection, Your Honor.

THE COURT: Sustained.

Q When you were outside, was it easier to hear that night than on most other nights?

MR MASTRONARDI: Objection, Your Honor.

THE COURT: Well he can answer that. Overruled.

MR. MASTRONARDI: Was it easier --

THE COURT: When he was outside, was it easier to hear. He didn't say he heard anything in the house. Was it easier to hear. Was it his experience easier to hear than on another type of night? He can answer that.

A I've always found cold nights to be clearer to hear any type sounds.

Q The traffic that was in that vicinity that night, was there a lot of traffic in that street?

A No, there was light traffic, sir.

Q And you indicated that there was a light out in the front and you said you could see when Mr. Benton came back?

A There's a street light in front of the house, yes, sir.

Q The area that we're talking about-- and I don't think anybody asked you the question -- how would you describe it? Is it an apartment complex, a series of houses, condominiums?

A It's part residency houses. One family houses with a school opposite it.

Q Okay. How about Mr. Benton's and Dr. Bell's? Did he have an apartment that you could tell or a condominium?

A It's a duplex. Side by side.

Q Side by side. A house?

A Yes. Two floors up and down.

Q All right. And how much land would you say is from the front door to the sidewalk?

A I'd say 35 feet, sir.

Q Any fencing or --

A No, sir, that's open.

Q -- in the front. You said there was some fencing in the back?

A The back is fenced, yes, sir.

Q You started talking about a driveway. Like each person would come in off the back road, have a driveway to the different half of the house?

A No, the -- there's a driveway in the back taht leads to 200 Westfield Avenue. 198 seems to have a short driveway on their side. Very short.

Q Okay. And the driveway that you think leads to 200 Westfield, would that come off of Westfield Avenue and go around the house?

A Yes, sir, it did, yeah.

Q Which side of the house would it go on?

A Well it's on the --

Q Either one? Dr. Bell's --

A -- 200 side.

Q -- or the Benton side?

A No, it would stay on the 200 side, sir.

Q Okay. So if I was to get in my car and drive to the rear, I'd go right by the whole side of Mr. Benton's house, go around behind it and park?

A Well you don't go around more or less. You just pull up behind it and you can park right there. There's -- in the back of the house, yes, sir.

Q And you'd -- you'd walk a couple of feet to the rear door?

A To Mr. Benton's house, yes.

Q Is it fair to say that the conversations that you heard by -- who identify as Mr. Benton, were done by your naked ear?

A Yes, sir, they were.

Q And they were not enhanced by any mechanical device of any kind?

A No, sir.

MR. MASTRONARDI: Asked and answered, Your Honor. I object. Your Honor.

THE COURT: Overruled.

MR. MASTRONARDI: Asked and answered, already.

THE COURT: Overruled.

Q The admission into the 198 Westfield was with the full permission of Dr. Bell?

A Yes, sir.

Q As a matter of fact, as you told Mr. Mastronardi, it was in part based on his concern that drugs were being sold next door by Mr. Benton?

A Yes, sir.

Q And also it was in part based on the fact that there was so much noise coming out of the apartment?

A There was a lot of problems, yes, sir.

Q As a matter of fact, did he ever tell you that he called the police on a couple of occasions there was so much noise?

A Yes, he did.

MR. SATTI: No further questions.

MR. MASTRONARDI: Your Honor, can I

just have a brief recess so I can read this report carefully?

THE COURT: Well Mr. Kelly can start and then you go next.

MR. KELLY: Your Honor, I don't feel I have any standing in this situation. But I do have standing to argue the four corners.

THE COURT: All right. Recess.

WHEREUPON COURT RECESSED AND SUBSEQUENTLY RECONVENED

REDIRECT EXAMINATION BY MR. MASTRONARDI

Q Inspector Gallick, I have in my hand, defendants' Exhibit "4." I'd like to show it to you.

A Yes, sir.

Q At the top of the page, it's dated January 6th, 1984. is that right?

A Yes, sir.

Q And the next lines says "Time: 6:00 p.m.," is that correct?

A That's correct, yes, sir.

Q All right. Was the report -- was that report prepared on January 6th, 1984?

A The report -- on the 8th, I believe, sir. January 8th.

Q Two days later?

A Yes, sir. Right. Indicated the 6th was the day it took place.

Q When you prepared this, did you refer to anything?

A I had notes, like I said earlier, sir.

Q Now these are the notes that you made while you were on site?

A Yes, sir.

Q On surveillance?

A Yes, sir.

Q Now between the time I spoke to you last and now -- the time when we went through direct earlier this morning and now, have you had the opportunity to think about what you did with your notes?

A Sir, I destroyed them. I don't keep no notes I write. I write so badly, I just don't keep notes.

Q By any chance, did you destroy those notes sometime after May 21st, 1984?

A I destroyed those notes the minute I'm done with the report, sir.

Q As soon as you write the report --

A Yes, sir.

Q -- you take them and you throw them away?

A Yes, sir, that's when I destroy them. yes, sir.

Q Now Mr. Satti asked you before or Mr. Satti referred to what you were doing that night at Inspector or at Mr. Bell's apartment as visual surveillance. Do you recall when he asked you that?

A Yes, sir, I went there for visual.

Q And you said, yes, you were to do visual surveillance?

A Yes, sir, I was.

Q Isn't it a fact that you were also there to do oral surveillance?

A The intent to be there, sir, was to watch any movement because of a possible package being delivered that night.

Q Inspector, did you talk to Mr. Satti between the time when you went through

direct examination and the time you went through cross?

A Not on -- not on this questioning, no, sir, I did not.

Q Didn't you testify this morning that when you went to the apartment, you knew in advance that it was possible to hear through the walls?

A I testified, sir, that Dr. Bell said you could hear. Not by my prior knowledge.

Q Did you have any reason to disbelieve Dr. Bell?

A I have no reason to disbelieve him. but that was not what was my intent, sir.

Q I'm not saying you had personal knowledge. But you knew -- you knew -- or at least you had a reason to believe that you could hear through the wall? Is that right?

A Oh, yes, right. Not through personal knowledge, but I'll agree to that. Yes, sir. I'd have to answer that as yes.

Q Now this morning you testified that you received -- that the informant information that we referred to -- I guess I'd better look at the affidavit. I'd like you to look at paragraph "j" of state's Exhibit "1." Do you recall this morning that you testified that the informant information was received about 20 hours before you went to Dr. Bell's apartment that evening?

A Yes, I answered exactly like you said. I said it was approximately 20 hours. I didn't --

Q Now would you tell us what the facts were upon which you based that determination this morning?

A Well as -- not seeing my reports at the time, I was not up to date on it. After reading my reports, I realized the informant had called just hours prior to going on the 6th at that house.

Q Hours prior?

A Yes, sir.

Q A few minutes ago, didn't you say it was one hour?

A The first call came in -- there was two calls, sir. The first call came approximaely 2:40 that -- the second call came 4:45, sir. There was two calls.

Q The first call was at 2:40?

A Yes, sir.

Q And you went to Dr. Bell's apartment at 6:00?

A Yes, sir.

Q So that would be about three hours before hand?

A Yes, sir.

Q In your experience, what time would -- withdrawn.

MR. MASTRONARDI: I'd like Your Honor to take judicial notice that the courts in the state of Connecticut close down at 5:00 o'clock.

THE COURT: I'll take judicial notice that the judges of the Superior Court are here from 9:00 to 5:00.

MR. MASTRONARDI: Thank you, Your Honor.

Q When the first telephone call came in, did it cross your mind to consult with one of the -- did you think to consult with

one of the attorneys in the office about the legality of going to Dr. Bell's apartment to listen throught the wall?

A No, the first call, sir, as in my report --

MR. SATTI: Well, I'm going to object. I think we're really getting into an area where I'm claiming privilege now. We know that there's a phone call, fine. I don't think there should be any discussion about the phone call. What he did with it and why he did eventually other than the issue of the search.

MR. MASTRONARDI: Your Honor, I -- my question has nothing to do with the phone call from the informant. My question had to do with what Inspector Gallick did after he got the phone call at his office.

MR. SATTI: I have no objection to that, but my understanding was --

THE COURT: He had no objection to anything that the Inspector did he got the phone call.

MR. SATTI: I was just concerned that the witness be directed not to talk about the --

THE COURT: He will not discuss the informant.

MR. MASTRONARDI: Please do not discuss the informant.

A I realize that.

Q And if I ask you something that has anything to do with your revealing the informant's identity, please --

A Oh, I --

Q -- let us know. Feel free. Did you it occur -- did it cross your mind after receiving the telephone call from the informant at 2:40 p.m. on January 6th, that it might be a good idea to consult with an assistant state's attorney with respect to the legality of listening through the wall into defendant Benton's apartment from Dr. Bell's apartment?

A Well the first call, sir, did not have 200 mentioned in it.

Q I'm sorry.

A The first call was not about 200 Westfield Avenue.

Q Oh, I see --

THE COURT: The first call was not concerning 200 Westfield Avenue. Isn't that correct?

A That's correct, sir.

Q The first call did not involve this case at all?

A Yes, it did, but at another location, sir.

Q Now again, without revealing the identity of the informant, was a basis given to you upon which you an make that determination -- on which that determination could be made? Did the informant give you a reason?

MR. MASTRONARDI: I'm not going to ask what the reason is, Your Honor. I just want to know if it was given.

MR. SATTI: I'm going to object at this point. I claim the privilege, number one. But number two, it's not really part of my

cross examination. It's going into something that he's done on his direct. But it's not part of my cross examination.

THE COURT: I'm going to sustain your objection based on vagueness.

MR. MASTRONARDI: I'll rephrase it. I'll try to rephrase it.

THE COURT: All right. Don't answer it because he's going to object.

A Yes.

Q Did the informant tell you what the basis of his knowledge or her knowledge was?

MR. SATTI: I'm going to object to that, Your Honor. I claim it as a privilege.

THE COURT: Sustained. The testimony I have -- I want to put the reason. The testimony is concerning the first call at 2:40 that the location was 200 Westfield Avenue was not involved. Was that your testimony, Officer?

A Yes, sir, it was.

THE COURT: All right.

Q Now you say the second call came at what time, sir?

A 4:45, I believe.

Q And during that call, did it-- would it be fair and accurate to say that that call related to 200 Westfield Avenue?

MR. SATTI: I'm going to object to that, Your Honor. I claim the informant

situation. It is not part of my cross. It didn't bring out anything about what was said. Just that it was an approximate change in time. That's all. It didn't go into anything about what was said. What the description was. Where it had gone on.

MR. MASTRONARDI: Your Honor, if I can't ask that question, then I ought to be able to ask this witness what his basis was to believe that there was anything that was going to go on at 200 Westfield Avenue.

THE COURT: Well I'll allow him to ask the question whether he had any knowledge concerning 200 Westfield Avenue was involved in the second call. You can answer that yes or no.

A Yes.

Q So is it fair and accurate to say that at a quarter to five or thereabouts, you decided that it would be a good idea to give Dr. Bell a call?

A Mr senior inspector and myself, yes, sir.

Q Was the state's attorney consulted on that?

A You'd have to ask the senior inspector on that.

Q Did you consult an attorney?

A No, I consulted my superior.

Q Now would it be fair and accurate to say that his investigation was an on-going investigation?

A Yes.

Q In other words, it wasn't sporadic? It wasn't a situation here and a situation there?

A No, sir. It was on-going.

Q It was an on-going investigation. And it was your belief, wasn't it, that Mr. Benton was receiving shipment of cocaine on a regular basis?

MR. SATTI: I'm going to object. It has nothing to do with my cross examination.

MR. MASTRONARDI: I'll make an offer of proof, Your Honor, if you'd like, without the witness in the room.

THE COURT: All right. Would you go in the jury room?

WHEREUPON THE WITNESS LEFT THE COURTROOM

MR. MASTRONARDI: Again, Your Honor, under UNITED STATES V. CASE, there's a

factor that is considered by the court--that was considered by the court in CASE, was the ability to get a search and seizure warrant. Here the investigation was on-going and informants were providing information to the state on a regular basis. They couldn't do it on that particular day. They could have done it on another day. That's the only thing that I wanted to -- that's the only point that I want to make.

THE COURT: Well he stated it was an on-going investigation.

MR. MASTRONARDI: Well I would just like him to admit that if he couldn't do it on that day, that if things didn't work out on that day, he could have gone on another day to get a warrant. I just don't -- I

just want to preclude the state from making some absurd exigency argument. That's all.

MR. SATTI: I think as I raised before, there is a difference. The search that he's talking about is a search warrant for drugs, not for conversation.

THE COURT: We have to narrow all of this down. We are --

MR. MASTRONARDI: Your Honor --

THE COURT: -- we are looking at the purposes of that affidavit, are we not? The purpose of that affidavit says there was a wide drug network. I don't think that I can presume or anyone can presume, based on the purposes in that affidavit, that they were just looking to arrest Mr. Benton for possession with intent to sell or a sale. They had a wider scope in mind.

MR. MASTRONDARDI: I don't -- I don't dispute that, Your Honor. My only point is that if they missed it this time, they could have gone -- they could have gone at another time. They were getting informant information on a regular basis. They were getting information. and they were doing regular surveillances. It wasn't the type of situation where something had to be done right there. That's the only point I'm trying to make. And I think that it's important because the ability of the state --

THE COURT: You've got your point in. I don't know why you have to continue it. I understand it.

MR. MASTRONARDI: What other -- just to address the question that Mr. Satti raises, Your Honor. The warrant that I'm claiming

should have been obtained, the court reviewed, should have been a seizure warrant. Authorization to the state to seize statements through the wall. To intrude into Mr. Benton's apartment and seize his statements throught the wall.

THE COURT: All right, if that's your claim. Bring him in. Overruled.

WHEREUPON THE WITNESS WAS RETURNED TO THE COURTROOM

MR. MASTRONARDI: Could you play back that last question?

WHEREUPON THE QUESTION WAS PLAYED BACK

A The question was about an on-going investigation, is that correct, sir?

Q No, the question was, was it your belief that cocaine was being delivered to 200 Westfield Avenue on a regular basis?

A My belief was that Mr. Benton was in a cocaine business, but I couldn't specify 200 Westfield Avenue at the time. No, I could not say that.

Q Well would it be fair and accurate to say that -- or would it be reasonable to say that if -- if you missed the shipment on that night --

A Um-humm --

Q -- you could probably pick it up another time?

MR. SATTI: I'm going to object. Speculative.

THE COURT: Sustained.

Q You testified earlier that you saw Mr. Benton and a woman run into the house carrying a clear plastic bag?

A No, a plastic bag, sir. I said clear bag. Clear plastic is used for cocaine. The bag I saw that night was a dark bag, sir.

Q The bag was not a clear bag?

A No, sir, no. I said that cocaine is stored in clear plastic bags.

Q In clear bags?

A Yes, sir.

Q And you said you saw them running into the house, is that right?

A At a quick pace, sir. Yes.

Q A quick pace. And that indicated to you at the time that they were trying to hide something. Is that right?

A Yes, sir, it did.

Q Didn't you also testify earlier that it was easy to hear outside because it was a cold night in January?

A No, I didn't testify to that. I said that cold night, the sound carries and it's clearer to hear. I did testify to that, sir, yes.

Q Would it be fair to say that that was a cold night?

A It was a cold night, sir.

Q In your experience, in your ordinary day to day living experience, on a cold day run into their house from their car?

A Yes, sir.

Q Have you seen it happen a lot?

A Not a lot, but I know it happens, sir.

Q Were they all cocaine dealers?

A I don't believe so, sir.

Q Did you suspect that they were dealing in cocaine?

A Under the circumstances, I would have to go to the particular cases you're talking about.

APPENDIX E

EXCERPTED AFFIDAVIT

8j. That on the date of January 6th, 1984 INSPECTOR JAMES GALLICK was assigned by the affiant to attempt to conduct a surveillance in the area of 200 Westfield AVenue in Bridgeport which in the residence of LEONARD R. BENTON, a/k/a LEONARD CAPOZZIELLO, after the affiant and INSPECTOR GALLICK received information from the confidential informant that "LENNY" was expecting to receive a shipment of cocaine from an unknown source on said evening.

(1) INSPECTOR GALLICK was able to acquire the use of an apartment located directly next door to BENTON'S apartment by approaching the owner and requesting the use of said apartment for surveillance in

an investigation and that said owner was not going to be home on said evening.

(2) That INSPECTOR JAMES GALLICK reported to the affiant that he took a position within the apartment at 198 Westfield Avenue at approximately 6:00 PM on the evening of January 6, 1984. INSPECTOR GALLICK reported to the affiant that while he was within the apartment he was able to overhear voices coming from the adjoining apartment of BENTON and he was further able to hear the ringing of the telephone from that apartment.

(3) That INSPECTOR GALLICK reported to the affiant that at approximately 6:10 PM he could overhear the telephone ring within BENTON'S apartment and was able to hear a

voice of a male subject answering the telephone from within BENTON'S apartment and was able to recognize the voice as being the voice of LEONARD R. BENTON a/k/a LEONARD CAPOZZIELLO. INSPECTOR GALLICK reported that he overheard BENTON informing someone that he eas expecting a "package" and that the person whom he was speaking to would have to pay him (BENTON) for the other package before BENTON would give the person another package this evening.

(4) At approximately 7:30 PM INSPECTOR GALLICK overheard the phone ring again within BENTON'S apartment and again was able to overhear BENTON answer the phone and speak with someone. During this conversation INSPECTOR GALLICK could overhear BENTON stating that he was looking

to obtain a package and informed the person that he had five (5) right now in his pocket and that the person would have to trust him for the other five (5) until Sunday. BENTON was overheard telling the other person that he wanted the "whole package now."

(5) INSPECTOR GALLICK reported to the affiant that immediately following the 7:30 PM phone call he observed LEONARD BENTON and a white female leave the apartment and enter into a red Ford Station Wagon, with the white female driving. INSPECTOR JAMES GALLICK transmitted this information via radio to INSPECTOR JIMMY GLOVER who was within the immediate area for the purpose of surveillance.

(6) That INSPECTOR JIMMY GLOVER assigned to the office of the State's Attorney for the Judicial District of Fairfield, did later report to the affiant that he observed the "red" Ford station wagon occupied by BENTON and operated by a white female and was bearing Connecticut Registration UK-7758. He reported that the vehicle traveled from Westfield Avenue in Bridgeport to Milford, Connecticut via the Connecticut Turnpike and turned onto Naugatuck AVenue in Milford. He kept surveillance of the vehicle to a location at Naugatuck Avenue where he observed the vehicle illegally pass through a red light while traveling straight on Naugatuck Avenue and was unable to continue surveillance without being detected.

(7) That INSPECTOR GLOVER reported to the affiant that a short time later he observed the same vehicle returning from Naugatuck Avenue and was able to maintain surveillance as the vehicle returned to Westfield Avenue in Bridgeport.

(8) That INSPECTOR JAMES GALLICK who was still within the adjoining apartment to the BENTON residence observed the female and BENTON arrive at said location at approximately 8:20 PM and further observed LEONARD R. BENTON, a/k/a LEONARD CAPOZZIELLO making observations of the area by looking both in easterly and westerly direction on Westfield Avenue and then immediately exited from the red station wagon and ran from the vehicle carrying a large plastic type bag which he held with

two hands, one hand holding the bottom of the plastic bag. BENTON was immediately followed by the female also running from the vehicle in the BENTON apartment.

(9) That INSPECTOR JAMES GALLICK reported to the affiant that he was able to overhear the voice of BENTON coming from the adjoining apartment speaking with the female and was able to overhear BENTON using the term "COKE" within his conversation with the female and using the term "ROCK".

(10) That INSPECTOR JAMES GALLICK and the affiant known from their prior training and experience and from other drug related investigations that the term "COKE" is the common abbreviation or term used for

cocaine and that the term "ROCK" is a common term used to describe the hard chunk like condition of cocaine which is commonly known to be of high quality.

(11) At approximately 8:45 PM INSPECTOR GALLICK observed a white male exit from a vehicle parked across from 200 Westfield Avenue and enter into BENTON'S apartment and was able to overhear a conversation coming from BENTON'S apartment between BENTON and another male voice. GALLICK was able to overhear BENTON remark, "Its good stuff!" and overheard the other male voice remark, "Yea, it looks good!" A short time later GALLICK was able to obtain the marker plate on the vehicle that the unknown male had arrived in as being Connecticut Registration 203-BBW. He was

able to describe the white male as being approximately six feet tall, and appearing to be in his mid-forties.

APPENDIX F

TO: A Judge of the Superior Court

The undersigned, being duly sworn, complains on oath that the undersigned has probable cause to believe that certain property, to wit: Narcotics substances, Cocaine, other controlled substances, cutting implements, plastic bags, scales, drug paraphernalia, monies and written records pertaining drug transactions, telephone tolls, telephone answering devices and their tape recordings, handguns and weapons normally used for the protection of large scale drug trafficking operations is possessed, controlled,

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[1] Manuscripted in pertinent part. Extraneous matter which has been eliminated noted by * * *.

designed or intended for use as a means of committing the crime of Possession of Narcotics with intent to sell, Sec. 21a-277a; Possession of Narcotics, Sec. 21a-279a; Conspiracy to violate Sec. 21a-277a (Sec. 53a-48). And is within or upon a certain person, place, or thing, to wit the residence of LEONARD A. BENTON, a/k/a LEONARD CAPOZZIELLO, located at 200 Westfield Avenue, Bridgeport, Ct. being a two story wood framed structure, color tan with white trim, a two family, duplex house, the left side of duplex being Number 200 Westfield Avenue. And that the facts establishing the grounds for issuing a Search and Seizure Warrant are the following:

1. That the affiant SENIOR INPECTOR JOHN F. SOLOMON is a regular member of the Division of Criminal Justice for the State of Connecticut presently assigned to the office of the State's Attorney for the Judicial District of Fairfield, having a total of eighteen (18) years police experience, formerly of the Connecticut State Police Department, and has participated in numerous investigations over the past eighteen (18) years involving the sales of narcotic and controlled substances.

2. That the affiant DETECTIVE PAUL LENGYEL is a regular member of the Bridgeport Police Department, having a total of fifteen (15) years police experience, and is presently assigned to

the Special Services Division of said police department, responsible for investigations concerning sales of narcotic and controlled substances. The affiant has also participated in numerous investigations involving the sales of narcotic substances and controlled substances.

3. That the facts and circumstances contained herein are the results of the investigative efforts of the undersigned affiants, acting in their official capacity, and the investigative efforts of other police officers acting in conjunction with them.

4. That during the month of December, 1982 the affiant SENIOR INSPECTOR JOHN F.

SOLOMON received information from Agents of the United States Department of Justice Drug Enforcement Administration, (D.E.A) that one LEONARD R. BENTON, a/k/a LEONARD CAPOZZIELLO was well known to their agency as being involved in large scaled drug trafficking within the state of Connecticut.

* * *

5. That during the month of November, 1983, SPECIAL AGENT DAVID HOYT of the Federal Drug Enforcement Administration (D.E.A.) reported to the affiant, INSPECTOR JOHN F. SOLOMON, that he had received information from a confidential source, whom AGENT HOYT had received prior information which proved to be reliable,

that LEONARD R. BENTON, a/k/a LEONARD CAPOZZIELLO was presently dealing large quantities of cocaine to various individuals and was in possession of large quantities of cocaine which he was keeping with him and contained within a brown leather "attache" case. The informant reported to AGENT HOYT that LENNY had recently moved into a new duplex apartment located at 200 Westfield Avenue, Bridgeport, Connnecticut.

6. That on the date of November 18, 1983 the affiant INSPECTOR JOHN F. SOLOMON met with CAPTAIN JOHN FORMICHELLA, Commanding Officer of the Special Services Division of the Bridgeport Police Department and DETECTIVE JAMES H. HONIS also of the Special Services Division of

said department. At this time the affiant INSPECTOR SOLOMON was introduced to a confidential and reliable informant who has supplied information in the past to CAPTAIN FORMICHELLA and DETECTIVE HONIS and other officers of the Special Services Division and which information has proven to be reliable and has led to arrests and convictions for several criminal offenses including the crimes of sales of narcotics and controlled substances.

7. That on the Date of November 18, 1983, the affiant INSPECTOR SOLOMON did interview the confidential and reliable informant who reported to the affiant that the informant has know LEONARD R. BENTON, a/k/a LEONARD CAPOZZIELLO for several years and has pruchased cocaine from BENTON, whom

the informant refers to as "LENNY", on several occasions over the past two years.

8. That on the date of January 6, 1984, the affiant INSPECTOR JOHN F. SOLOMON received information from the confidential and reliable informant described in paragraph 6 and paragraph 7 of this affidavit, that "LENNY" was about to receive a shipment of cocaine on said evening. INSPECTOR JAMES GALLICK and other officers were assigned to conduct surveillances at his residence at 200 Westfield Avenue in Bridgeport.

9. That on the evening of January 6, 1984, "LENNY" was observed leaving his apartment at approximately 7:30 P.M. along with a white female, later identified as

being one CAROLINE CASSIDY, a/k/a CAROLINE VOROS, a girlfriend of "LENNY", and both subjects left the area in a "red" colored Ford station wagon, bearing Connecticut Registration UK-7758, listed to CAPOZZIELLO, 1317

* * *

Boston Avenue, Bridgeport, Connecticut, the known business agency of LEONARD BENTON. The vehicle was kept under surveillance by INSPECTOR JIMMY GLOVER of the State's Attorney's Office for the Judicial District of Fairfield, where it was followed by him to town of Milford, Connecticut. INSPECTOR GLOVER reported to the affiants that he observed the vehicle turn onto Naugatuck Avenue in Milford and upon stopping at a

red light, he observed the vehicle unlawfully pass through the red light. INSPECTOR GLOVER discontinued his surveillance to prevent detection.

10. INSPECTOR JIMMY GLOVER further reported to the affiants that after a short period of time he again observed the same vehicle, occupied by LEONARD BENTON and the female driver, returning along Naugatuck Avenue in Milford, coming from the area where he lost sight of it. At this time he was able to follow the vehicle as it returned to Westfield Avenue in Bridgeport.

11. At approximatley 8:20 PM on January 6, 1984, INSPECTOR JAMES GALLICK, still maintaining surveillance in the area of the BENTON residence at 200 Westfield

Avenue in Bridgeport, did observe LENNY and his girlfriend return to the area and park in front of his residence. INSPECTOR GALLICK was able to observe LEONARD BENTON make several observations of the area before he exited from his vehicle. Upon exiting the vehicle, GALLICK was able to observe BENTON remove a plastic type garbage bag from the vehicle with one hand held under the bag and the other hand grasping the top of the plastic bag.

12. INSPECTOR GALLICK further observed the white female driver, now known to be CAROLINE CASSIDY, a/k/a CAROLINE VOROS, immediately run from the vehicle into the BENTON residence at 200 Westfield Avenue.

13. After further investigation, the Honorable DONALD A. BROWNE, State's Attorney for the Judicial District of Fairfield made application to the Wiretap Panel for the State of Connecticut for a court authorized wire intercept for telephone facilities (203) 271-1128 and (203) 374-9498, listed to LEONARD BENTON at 200 Westfield Avenue, Bridgeport, Connecticut.

* * *

14. That on the date of January 25, 1984 the three judge panel, after reviewing the application of State's Attorney DONALD A. BROWNE, authorized the interception of telephone communications over telephone

facilities (203) 371-1128 and (203) 374-9498 pursuant to Order Number 84-03.

15. That on the date of January 25, 1984, Police Inspectors of the Division of Criminal Justice for the State of Connecticut began intercepting telephone communications from the two telephone facilities at the residence of LEONARD R. BENTON, a/k/a LEONARD CAPOZZIELLO at 200 Westfield Avenue, Bridgeport, Connecticut.

16. Between the dates of January 25, 1984 and February 3, 1984 LEONARD R. BENTON, a/k/a LEONARD CAPOZZIELLO was intercepted on numerous occasions conversing with persons known and unknown about the sale of narcotics (cocaine). It is been made clearly evident from the

numerous pertinent interceptions that LEONARD BENTON was receiving a large quantity of cocaine approximately once a week and was cutting and packaging cocaine for sale and was distributing it to numerous individuals.

17. On the date of January 25, 1984 LEONARD BENTON was intercepted from his home telephone facility (203) 371-1128 dialing out to telephone facility (203) 366-0326) where he had a conversation with a female and LENNY was trying to reach a male subject named TOM. The female, who answered to the name "MISSEY" informed LENNY that TOM went to Norwalk. LEN asked MISSEY "How much was he going to get?" and MISSEY stated, "Not too much, an eighth (1/8) or a quarter (1/4), known by the

affiants to be the package size descriptions commonly used for cocaine.

18. On the same date of January 25, 1984 BENTON was again intercepted talking to the same female, "MISSEY" at telephone facility (203) 366-0326 who advised BENTON that plans were being made to get a "Z" a common term known by the affiants through their prior training and experience in narcotic investigation to be a term commonly used to describe an ounce of cocaine. The female "MISSEY" advised BENTON that very little money would be needed, "Up front."

19. In subsequent calls during the same evening BENTON spoke with a male subject at the same telephone facility by

the name of TOM and advised TOM to get the money together and to come over to BENTON'S house and that LENNY would be going with TOM to pick up.

* * *

20. At approximately 9:00 PM, on January 25, 1984, shortly after TOM advised BENTON that he was coming to the BENTON residence, DETECTIVE JAMES HONIS of the Bridgeport Police Department observed a 1972 Chevrolet Nova, color silver, bearing Connecticut Registration 102-BMJ arrive at BENTON'S residence occupied by a white male later identified as being one THOMAS J. FALCONE, D.O.B. 04/10/57. A check made through the Connecticut Motor Vehicle Department revealed that Connecticut

Registration is listed to THOMAS J. FALCONE.

21. During said evening surveillances were maintained which observed LEONARD BENTON, THOMAS FALCONE, and BENTON'S girlfriend, CAROLINE CASSIDY, a/k/a driving from Bridgeport, Connecticut to Norwalk, Connecticut where THOMAS FALCONE departed from BENTON and his girlfriend, leaving LEONARD BENTON and CAROLINE at the Howard Johnsons Restaurant on East Avenue in Norwalk. FALCONE met with other unknown persons and eventually returned to meet with BENTON and CAROLINE at the Howard Johnson Restaurant and all three then drove back to BENTON'S residence at 200 Westfield Avenue. All three were then observed entering into the BENTON apartment.

22. On the evening of January 25, 1983 at approximately 10:15 PM Detective JAMES HONIS conducting surveillance at 200 Westfield Avenue in Bridgeport observed LEONARD BENTON carrying a small package in his hand as he and FALCONE and CAROLINE entered into the apartment. He further observed all the shades being pulled down immediately after they entered into the residence.

21. At 10:21 PM on said evening, LEONARD BENTON was intercepted over telephone facility (203) 371-1128 calling out to 335-1707 where he spoke with a female by the name of DOLORES informing her that he had some real "good stuff".

22. At 10:58 PM an incoming call was intercepted from an unknown female asking if LENNY had anything. LENNY told the female that he has it and she could come over.

23. That between the dates of January 25, 1984 and February 3, 1984, the intercepted telephone communications of LEONARD BENTON with other persons, known and unknown, along with surveillances, have substantiated that LEONARD R. BENTON, a/k/a LEONARD CAPOZZIELLO is distributing cocaine on a daily basis, and replenishing his supply of cocaine when necessary. It is evidence from the surveillances and intercepted wire communications that there is cocaine within BENTON'S apartment daily for the purpose of selling.

* * *

24. On the date of February 3, 1984 at 4:46 PM, a call was intercepted LEONARD BENTON'S phone (371-1128) outgoing to telephone facility (203) 259-8834 in which BENTON spoke to one J.P. and informed J.P. that he wanted four (4), later determined to be four (4) ounces of cocaine or one quarter of a pound of cocaine. BENTON indicated to J.P. that he was ready to "Re-up."

25. At 5:55 PM an incoming call was intercepted over BENTON'S phone indicating that J.P. would be bringing the package. During this conversation it was determined that the subject talking with BENTON was

J.B. who has been identified previously as one JAMES BIANCHI known source of supply of cocaine of BENTON'S.

25. At 7:35 PM surveillance officers in the area of the BENTON residence observed a white Lincoln Continental arrive at BENTON'S bearing Connecticut Registration 162-BPV, listed to JAMES BIANCHI. Surveillance officers observed a white male leave the vehicle and enter into BENTON'S apartment carrying an attache case. A short time later the same male exited from the house and placed the attache case into the trunk of said vehicle and then drove from the area.

26. At 7:09 PM, shortly prior to the arrival of the BIANCHI vehicle, BENTON was

intercepted over his telephone speaking to a Female named DOLORES at telephone facility (203) 335-1707 in which he indicated that he has heard from his people and they would be sending a guy over to collect the money. He stated that he had $4,500.00. DOLORES informed LENNY that she needed "eight balls" known by the affiants to be common drug language for 1/8 ounces.

27. That the affiants known through the records of the Southern New England Telephone Company that facility 334-1707 is listed to one KEVIN KISTNER at 74 Suburban Avenue, 2nd floor, Bridgeport, Connecticut. This address know by the affiants to be the residence of one DOLORES KISTNER.

28. That during the remaining hours of the evening LEONARD BENTON had several conversations with known and unknown individuals whom he informed that he was holding a supply of narcotics, and in one conversation he reported to have a quarter pound.

29. During the evening hours of February 3, 1984 between the hours of 8:00 PM and 10:30 PM observations were made by surveillance officers at the area of the BENTON Residence of several individuals arriving and entering into BENTON'S residence and leaving shortly thereafter.

* * *

30. At 8:12 PM on February 3, 1984 a white female was observed arriving in a vehicle bearing Connecticut Registration VR-8206, listed to on ELIZABETH BEAN. Prior to her arrival the affiants know that a BETSY was intercepted on several calls to BENTON which were drug related and indicate that BETSY was receiving cocaine from BENTON. Telephone calls were made to telephone facility (203) 374-5382, listed to ELIZABETH BEAN, 3201 Madison Avenue, Bridgeport, Connecticut.

31. At 8:37 PM on February 3, 1984 a vehichle listed to THOMAS FALCONE arrived at the BENTON residence and surveillance officers were able to identify THOMAS FALCONE leaving the vehicle and entering into BENTON'S apartment. Prior to his

arrival two calls were intercepted between FALCONE and BENTON in which BENTON informed FALCONE that he had a quarter pound and for TOM to come over. FALCONE advised BENTON that he would be there at 8:30 PM.

32. At 9:50 PM a white female arrived at the BENTON residence operating a 1980 Chevy Station Wagon, bearing Connecticut Registration JY-5764 listed to FRANK CIOFFI at 35 Seabreeze Dr., Stratford, Connecticut. That prior to the arrival of this female BENTON had to conversations with a female indentified as ROS, whom he told that, "He had it" and for her to come to his residence. ROS subsequently told BENTON that she would arrive about 9:45 PM. This subject was intercepted during prior conversations with BENTON about the

purchase of cocaine and it was determined that the calls were made to telephone facility (203) 377-0868 listed to R. CIOFFI at 35 Seabreeze Drive, Stratford, Connecticut.

33. From the conversations intercepted during the evening hours of February 3, 1984 and the observations of the surveillance officers of the arrivals of individuals described above it is the opinion of the affiants that LEONARD BENTON received a substantial supply of cocaine which he districuted to persons, known and unknown and that he presently has cocaine within his apartment at 200 Westfield Avenue, Bridgeport, Connecticut.

* * *

---

* * *

Then and there by virtue of and pursuant to the authority of the foregoing warrant, I searched the person, place, or thing named therein to wit: The residence of Leonard A. Benton a/k/a Leonard Capozziello, located at 200 Westfield Avenue, Bridgeport, Connecticut being a two story wood framed structure, color tan with white trim, a two family, duplex house, the left side of duplex being number 200 Westfield Avenue and found thereon or therein, seized, and now hold in custody, the following property:

1 9mm Kurz pistol ser. 303488

1 .44 cal. Ruger pistol, ser. 500-18549

2 plastic baggies containing a white powder suspected to be cocaine

1 strong box containing drug records

plastic baggies all sizes

Glass canning type jar containing U.S. Currency which totals to $849.00

A plastic baggie containing two plastic baggies that contain a white powder suspected to be cocaine, 1 razor blade, 2 straws and a black ashtray

Micro Coveror glass slides

1 Digital Hot Box

0.1 triple bean scale with container

1.1 Tital Model .380 cal. FIE auto Ser. Z82919

2.1 box of 4x2x8 plastic baggies

3.1 glass jar containing $16.01

4.1 mirror and razor blade with white powder residue

5.1 answering machine with tape

which was possessed, controlled, designed, or intended for use as a means of committing the crime described in the foregoing affidavit and application, or is or has been used as the means of committing the crime descirbed in the foregoing affidavit and application, or was stolen or embezzled, or constitutes evidence of a crime, or that a particular person participated in the commission of a crime; and I gave a copy of such warrant to Leonard Benton, the owner or occupant of the dwelling, structure, motor vehicle or place designated therein, the person named therein, on Feb. 5, 1984.

* * *

---

* * *

X] enter into or upon and search the place or thing described in the foregoing Affidavit and Application, to wit: the residence of LEONARD R. BENTON, a/k/a LEONARD CAPOZZIELLO, located at 200 Westfield Ave., Bridgeport, Connecticut, being a two story wood framed structure, color tan with white trim, a two family duplex house, the left side of duplex being number 200 Wesfield Avenue.

* * *

Narcotic substances, cocaine, other caontrolled substances, cutting implements,

plastic bags, scales, drug paraphernalia, monies and written records pertaining to drug transactions, telephone tol telephone answering devices, and tape recordings, handguns normally used for the protection of large scale drug trafficking networks.

APPENDIX G

SUPREME COURT

STATE OF CONNECTICUT

NO. PSC-86-1089

State of Connecticut

v.

Leonard R. Benton

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petition by the defendant for certification to appeal from the Appellate Court (10 Conn. App. 7) it is hereby ordered that said petition be, and the same hereby is granted, limited to the issue:

Were the defendant's rights under the fourth amendment to the United States constitution violated by failure to suppress statements overheard, without the use of any aural enhancement device, by a police officer stationed in apartment adjacent to that of the defendant?

BY THE COURT,

Cynthia M. Gworek/s/
Asst. Clerk-Appellate

Dated: April 9, 1987

Supreme Court, U.S.
FILED
MAY 25 1988
JOSEPH F. SPANIOL, JR.
CLERK

NO. 87-1747

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

LEONARD R. BENTON,

Petitioner,

V.

STATE OF CONNECTICUT,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF CONNECTICUT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

C. ROBERT SATTI, JR.
Assistant State's Attorney
for the Judicial District
of Fairfield
Attorney for Respondent
STATE'S ATTORNEY'S OFFICE
1061 Main Street
Bridgeport, CT 06604
(203) 579-6506

DONALD A. BROWNE
State's Attorney
for the Judicial District
of Fairfield

QUESTION PRESENTED

Were the defendant's rights under the Fourth Amendment violated where a police officer, in the course of a warrantless surveillance, overheard statements of the defendant without the use of any aural enhancement device, while legally stationed in a neighbor's adjoining duplex apartment?

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

The respondent agrees generally with the Statement of Facts in the Petition for Certiorari and adds the following corrections and additional facts.

There is no evidence that the walls were "paper thin" (Pet. p. 3). Nor was there any evidence that the Inspector heard "word for word" the conversations. (Pet. p. 3) (See also A-18 earlier claim by the defendant that what was overheard was " 'ambiguous snippets of unrelated conversations.' ").

The defendant does not contest the facts of the Appellate Court decision. In that case the Court noted that "the defendant admitted at the suppression hearing that he could hear conversations occurring in" [the adjacent apartment.] (A-17)

Furthermore, the neighbor "had complained to the police about noise emanating from the defendant's apartment..." (A-17, 110-111).

The Connecticut Supreme Court, citing federal precedent exclusively, affirmed the Appellate Court. In so doing it held:

> Conversations carried on in any type of residence, or anywhere for that matter, in a tone audible to the unaided ear of a person located in a place where that person has a right to be, and where a person can be expected to be, are conversations knowingly exposed to the public, (cites omitted)...The type of dwelling is inconsequential except insofar as its physical attributes increase the vulnerability of its occupants to eavesdropping by the unaided ear. (cites omitted) (A-7)

ARGUMENT

While this case is unique on its facts and the only reported decision of its kind in this country, it is not the proper subject to have the petition granted. It is respectfully submitted that it does not present an issue "often alluded to by lower courts, but consistently left open and unresolved." (Pet. p. 7) for the following reasons.

In *Katz v. United States*, 389 U.S. 347, 351 (1967) it was held that the Fourth Amendment "protects people, not places." However, "What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment Protection. (cites omitted.)" *Id.* Justice Harlan in his concurrence further stated, "...Statements that he exposes to the 'plain view' of outsiders are not 'protected' because no intention to keep them to himself has been exhibited." *Id.* at 361. The defendant in this case clearly exposed his statements to outsiders in that he knew that he could hear his neighbor's conversations. (A.)

Katz sets forth a two part inquiry, "first that a person have exhibited an actual (subjective) expectation of privacy, and second, that the expectation be one that society is prepared to recognize as 'reasonable' " *Id.* That inquiry requires a factual inquiry into all the relevant circumstances. *Oliver v. United States*, 466 U.S. 170, 177-178 (1984). The Connecticut Appellate Courts conducted the required factual inquiry.

This Court has never held that a person's home is always a place that is subject to Fourth Amendment protections. *Katz, supra.* See also *California v. Ciraola*, 476 U.S. 207 (1986) and *United States v. Karo*, 468 U.S. 705, 714 (1984). Lower federal courts have clearly followed the dictates of *Katz* and recognized that what "a person knowingly exposes to the public... is not a subject of Fourth Amendment protection." *Katz, supra* at 351.

The Petitioner claims in his Petition that the "decision...simply cannot be reconciled with federal decisional law in the subject..." and "...rule adopted...has been expressly rejected in the past by federal courts as 'overly broad' " (Pet. p. 11). The Petitioner provides no case references for such claims and as pointed out above the Connecticut Supreme Court properly followed the federal decisional law on the subject.

In *United States v. Martin*, 509 F.2d 1211, 1214 (9th Cir.), cert. denied, 421 U.S. 967 (1975) the Court held, "Eavesdropping from a place where [an] officer has a right to be is a long-accepted technique of crime detection, not outlawed by the Fourth Amendment. If [the defendant] had talked loud enough to be overheard his expectation of privacy would be gone." This is the general rule that has been followed by the federal Circuits that have addressed the issue. *United States v. Mankani*, 738 F.2d 538, 543 (2d Cir. 1984); *United States v. Wheeler*, 641 F.2d 1321, 1324 (9th Cir. 1981); *United States v. Agapito*, 620 F.2d 324, 330-31 (2d. Cir.), cert. denied, 449 U.S. 834, 101 S.Ct. 107, 66 L.Ed.2d 40 (1980); *United States v. Jackson*, 588 F.2d 1046, 1053, reh. denied, 591 F.2d 1343 (5th Cir.), cert. denied, 442 U.S. 941, 99 S.Ct. 2882, 61 L.Ed. 2d 310 (1979); *United States v. Ortega*, 471 F.2d 1350, 1361 (2d Cir. 1972), cert.

denied, 411 U.S. 948, 93 S.Ct. 1924, 36 L.Ed.2d 409 (1973); *United States v. Muckental*, 584 F.2d 240, 245 (8th Cir. 1978); *Ponce v. Craven*, 409 F.2d 621, 624 (9th Cir. 1969), cert. denied, sub nom. *Ponce v. California*, 397 U.S. 1012 (1970).

The rule has been followed because, "The risk of being overheard by an eavesdropper... is probably inherent in the conditions of human society. It is the kind of risk we necessarily assume whenever we speak." *Hoffa v. United States*, 385 U.S. 293, 303, reh. denied, 386 U.S. 940 (1967), quoting *Lopez v. United States*, 373 U.S. 427, 465 (1963) (Brennan, J. dissenting).

In all of the federal circuit court cases in this area of the law that have sought certiorari to this court certiorari has been denied. *United States v. Agapito, supra; United States v. Jackson, supra; United States v. Martin, supra; United States v. Ortega, supra; Ponce v. Craven, supra; United States v. Fisch*, 474 F.2d 1071 (9th Cir.), cert. denied, 412 U.S. 921 (1973); *United States v. Llanes*, 398 F.2d 880 (2d Cir. 1968), cert.denied, 393 U.S. 1032 (1969). The respondent recognizes, however, that none of the above cited cases are factually similar to this case, which appears to be the only reported decision on multiple unit dwellings in this country.

The Petitioner misreads the decisions of the Connecticut Appellate Courts. He states in his Petition (p. 8) that the Connecticut Courts placed "great weight and emphasis on the absence of physical trespass" and that "unless Gallick were a 'trespasser,' his eavesdropping with the naked ear could not, as a matter of law, violate the Fourth Amendment." (Pet. p. 8 fn. 4) In fact, in a review of all Connecticut court decision there is no mention of trespass at all. Further, the Petitioner clearly does not dispute the fact that Inspector Gallick "was not a trespasser." (Pet. p. 10)

The Connecticut Courts properly followed the overwhelming weight of authority for in an age and time when multiple unit buildings are found in all urban and suburban areas it is unreasonable for the defendant to expect that the occupant of an adjoining apartment will not report suspicious activity to the police who in turn may

occupy that adjoining apartment for surveillance purposes. *United States v. Taborda*, 635 F.2d 131, 138 (2d Cir. 1980); *United States v. Martin*, *supra* at 1214; *Hoffa v. United States*, *supra;* See also *United States v. Hall*, 483 F.2d 193, 198 (9th Cir. 1973) (holding that there is no constitutional protection where a party "makes statements at a time when he has reason to know some third party is, or probably is, listening.").

There is no conflict of this decision with other state or federal appeals courts. While the Connecticut courts have decided important federal law it need not be settled by this Court.

CONCLUSION

The State of Connecticut respectfully represents that there is no conflict of decisions and urges this Court to deny the Petition for Certiorari.

Respectfully submitted,

C. ROBERT SATTI, JR.
Assistant State's Attorney
Judicial District of
Fairfield Part A

DONALD A. BROWNE
State's Attorney
Judicial District of
Fairfield Part A